

Gayle M Ito/DLNR/StateHiUS
04/02/2008 04:06 PM

To jccross@hawaiiantel.net
cc Carty S Chang/DLNR/StateHiUS@StateHiUS, Nami J
Wong/DLNR/StateHiUS@StateHiUS, Marshall I
Sakai/DLNR/StateHiUS@StateHiUS, Alyson K
bcc
Subject Plug and Abandon Geothermal Well SOH-4

John,

I had previously e-mailed you regarding the State's intent to plug and abandon the geothermal well located on the property owned by the Edmund C. Olson Trust No. 2 on the Big Island (TMK: 1-2-10:01) in accordance with the License Agreement dated September 9, 1996 between the Campbell Estate and the State of Hawaii. For your information our consultant, Oceanit, will be on the premises on Tuesday, April 8, 2008 to conduct a field investigation. Oceanit is responsible for the plans, specifications and permitting to plug and abandon the well.

Should you have any questions, please contact me, Marshall Sakai or Nami Wong.

Gayle Ito

Telephone: (808) 587-0273
E-mail: gayle.m.ito@hawaii.gov

* * * * *

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Marshall I
Sakai/DLNR/StateHiUS

04/02/2008 02:33 PM

To Eric A Tanaka/DLNR/StateHiUS@StateHiUS

cc [REDACTED]m, Gayle M
Ito/DLNR/StateHiUS@StateHiUS, Nami J
Wong/DLNR/StateHiUS@StateHiUS, Carty S

bcc

Subject Site Visit to Geothermal Well SOH-4 and KA1-1

Eric.

The Oceanit consultants will perform a site investigation of Geothermal Wells SOH-4 and KA1-1 on Tuesday, April 8, 2008. I told the consultants per Phoncon of April 2, between you and me that they do not need a key(s) to access the well sites. Our office will inform the well owners(OHA and Cross) that DLNR consultants will be doing field investigation on April 8, 2008.

The consultants will be responsible for their own land transportation. I provided the consultants with your office phone number and your cell phone number.

Please e-mail the consultants and me if there are additional instructions. Thank you for your support. v/r
Marshall

Gayle M Ito/DLNR/StateHiUS
01/09/2008 09:54 AM

To "jccross@hawaiiantel.net" <jccross@hawaiiantel.net>
cc Eric T Hirano/DLNR/StateHiUS@StateHiUS, Carty S
Chang/DLNR/StateHiUS@StateHiUS, Alyson K
Yim/DLNR/StateHiUS@StateHiUS, Nami J
bcc
Subject Re: Plug and Abandon Geothermal Wells SOH-4

John,

Thank you for responding to my e-mail and providing additional contact information.

In a nutshell, the License grants the State of Hawaii the right to use and maintain two geothermal well sites, one located on Olson Trust's property, and to use access roadways. The State, upon termination or expiration of the License, is required to plug and abandon the well. The sole responsibility of plugging and abandoning the well belongs to the State and Olson Trust is not obligated, financially or otherwise, in this endeavor.

We will keep you informed of our progress and in the interim, should you have any questions, please feel free to contact me.

Gayle Ito

Telephone: [REDACTED]
E-mail: gayle.m.ito@hawaii.gov

* * * * *

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"jccross@hawaiiantel.net" <jccross@hawaiiantel.net>



"jccross@hawaiiantel.net"
<jccross@hawaiiantel.net>
01/07/2008 02:31 PM

Please respond to
"jccross@hawaiiantel.net"
<jccross@hawaiiantel.net>

To <Gayle.M.Ito@hawaii.gov>
cc
Subject Re: Plug and Abandon Geothermal Wells SOH-4

Gayle,

Yes, E-mail would be my first preference. Alternatively our mailing address is P.O. Box 280
Pahala, HI 96777.

You can reach me by land line at 934-9292 or cell [REDACTED]

I am not familiar with the License Agreement, are there any financial obligations or other requirements of Olson Trust in this endeavor?

Thanks,

John C. Cross

-----Original Message-----

From: Gayle.M.Ito@hawaii.gov

Date: 01/04/2008 14:21

To:

Cc: , , ,

Subj: Plug and Abandon Geothermal Wells SOH-4

Mr. Cross,

I am with the State of Hawaii, Department of Land & Natural Resources, Engineering Division and we are in the design stage of plugging and abandoning geothermal well SOH-4, located on the property owned by Edmund C. Olson Trust No. 2 on the Big Island (TMK: 1-2-10:01). Plugging and abandoning will be done in accordance with the License Agreement dated September 9, 1996, between the Campbell Estate and State of Hawaii.

Your name was provided as a contact for this property and we would like to open up a line of communication before proceeding to construction. Is e-mailing your preferred choice of communicating?

Should you have any questions, comments and/or concerns, please call or contact me by e-mail.

Gayle Ito

[REDACTED]: [REDACTED]

E-mail: gayle.m.ito@hawaii.gov

* * * * *

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Alyson K
Yim/DLNR/StateHiUS
12/26/2007 12:30 PM

To Gayle.M.Ito@hawaii.gov, Nami J
Wong/DLNR/StateHiUS@StateHiUS, Marshall I
Sakai/DLNR/StateHiUS@StateHiUS,
cc Eric T Hirano/DLNR/StateHiUS@StateHiUS
bcc

Subject Fw: Geothermal Well Plugging and Abandonment

fyi

----- Forwarded by Alyson K Yim/DLNR/StateHiUS on 12/26/2007 12:30 PM -----



Sheri S
Mann/DLNR/StateHiUS
12/26/2007 11:34 AM

To Alyson K Yim/DLNR/StateHiUS@StateHiUS
cc Roger H Imoto/DLNR/StateHiUS@StateHiUS, Bryan H
Sugiyama/DLNR/StateHiUS@StateHiUS
Subject Re: Fw: Geothermal Well Plugging and Abandonment

Aloha Alyson,

I found out that the soh-4 smaller well is not technically on State land (Oha owns the title to Wao Kele O Puna and DLNR is managing it via an MOU). This well is on the Olson Trust Land. I assume you know this but wanted to be sure. Below is an e-mail for John Cross, who is the appropriate contact for Olson Trust land.

I didn't hear back from you about when you need to know about 'converting to original condition' road and inner 6 acres. I'm still trying to get the final answer on that.

Thanks,

Sheri,

Yes – it's Jccross@hawaiiantel.net

Jonathan Likeke Scheuer

Director

Land Management Hale

Office of Hawaiian Affairs (OHA)

711 Kapi'olani Blvd. Suite 500

Honolulu , Hawai'i 96813

Office: (808) 594-1946

Fax: (808) 594-1865

Email: jonathans@oha.org

Main number (808) 594-1835

From: Sheri.S.Mann@hawaii.gov [mailto:Sheri.S.Mann@hawaii.gov]
Sent: Friday, December 21, 2007 1:34 PM
To: Jonathan Scheuer
Subject: RE: WKOP Well

Do you have his contact info?

Sheri

"Jonathan Scheuer" <jonathans@oha.org>

12/21/2007 10:48 AM

To <Sheri.S.Mann@hawaii.gov>
cc

Subject RE: WKOP Well

Hi sheri,

Am trying to dig out of hundreds of emails.

Keep in mind that soh-4 is on the olson trust land, not the oha / dlnr wao kele parcels. Olson's Land manager is John Cross

Jonathan Likeke Scheuer
Director
Land Management Hale
Office of Hawaiian Affairs (OHA)
711 Kapi'olani Blvd. Suite 500
Honolulu , Hawai'i 96813

Office: (808) 594-1946
Fax: (808) 594-1865
Email: jonathans@oha.org

Main number (808) 594-1835

From: Sheri.S.Mann@hawaii.gov [mailto:Sheri.S.Mann@hawaii.gov]
Sent: Friday, December 14, 2007 11:37 AM
To: Jonathan Scheuer; Roger.H.Imoto@hawaii.gov; sbergfeld@dofawha.org; rick_warshauer@usgs.gov; renesiracusa@hotmail.com; lorienuiquez@hotmail.com; kolhawaii@gmail.com; Betsy.H.Gagne@hawaii.gov; gasner@globalecology.stanford.edu; pacificecoservices@gmail.com; David.R.Joughin@hawaii.gov; Lea.Hong@tpl.org
Subject: Fw: WKOP Well

Aloha Again,

Just a quick update. I didn't realize they are going to fill both the KA1-1 large well, but also the SOH-4 slimehole well too. This is great news. We are still working on lifting the geothermal subzone.

Thanks,

Sheri

----- Forwarded by Sheri S Mann/DLNR/StateHiUS on 12/14/2007 11:29 AM -----

Sheri S
Mann/DLNR/StateHi
US
12/14/2007 10:53 AM To Jonathan Scheuer, Roger H Imoto/DLNR/StateHiUS, sbergfeld@dofawha.org, Rick Warshauer, Rene Siracusa, lorienuiquez@hotmail.com, Laura Brezinsky, Betsy H Gagne/DLNR/StateHiUS, Greg Asner, Roberta Martin, David R Joughin
cc
Subj:WKOP Well
ect

Aloha,

The DLNR Engineering Division is moving forward with filling and abandoning the KA1-1 geothermal production well in Wao Kele O Puna. They anticipate the bid announcement and selection process to be complete by late summer and for the work to commence sometime in fall 2008. I have asked to be informed of the company who is selected so we can inquire about the nature of this process such as: when will the work take place, how long will it take, size and amount of equipment involved, and the kind of noise they anticipate producing.

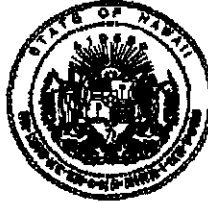
When we know more about the specific details of this process we will have a community meeting to convey all information that we have.

Thanks,

Sheri Mann
Sheri S. Mann
Cooperative Resource Management Forester
Division of Forestry & Wildlife
Department of Land & Natural Resources
State of Hawaii
Ph: 808-587-4172
Fax: 808-587-0160
Cell: 808-721-6092

1

RECORDER'S MEMO
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R-883 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
JUL 14, 2006 09:00 AM
Doc No(s) 2006-129681



/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

20 2/8 29

LAND COURT

REGULAR SYSTEM

Return By Mail ☒ Pick-Up ☐ To:

CARLSMITH BALL LLP
ASB Tower, Suite 2200
1001 Bishop Street
Honolulu, Hawaii 96813
Attention: Eric A. James
Telephone: 808.523.2500

TGOH 200527898 →
TGES A5-101-1630
BARBARA PAULO

TITLE OF DOCUMENT:

Easement No. E02043900

GRANT OF EASEMENT FOR ACCESS RIGHTS

PARTIES TO DOCUMENT:

INITIAL
GRANTOR:

C.R. CHURCHILL, D.A. HEENAN, RICHARD W. GUSHMAN, II and
RONALD J. ZLATOPER, the duly appointed, qualified and acting
TRUSTEES UNDER THE WILL AND OF THE ESTATE OF JAMES
CAMPBELL, DECEASED, acting in their fiduciary and not in their
individual capacities

GRANTEE:

THE TRUST FOR PUBLIC LAND a California nonprofit public benefit
corporation
The Trust For Public Land National Office
116 New Montgomery Street
4th Floor, San Francisco, California 94105

TAX MAP KEY(S):

Hawaii 1-2-10-2
Hawaii 1-2-10-3

(This document consists of 18 pages.)

GRANT OF EASEMENT FOR ACCESS RIGHTS

THIS GRANT OF EASEMENT FOR ACCESS RIGHTS ("Grant of Easement") is made this 14th day of July, 2006, by and between C.R. CHURCHILL, D.A. HEENAN, RICHARD W. GUSHMAN, II and RONALD J. ZLATOPER, the duly appointed, qualified and acting TRUSTEES UNDER THE WILL AND OF THE ESTATE OF JAMES CAMPBELL, DECEASED, acting in their fiduciary and not in their individual capacities, whose principal place of business and post office address is James Campbell Building, 1001 Kamokila Boulevard, Kapolei, Hawaii 96707 ("Initial Grantor"), and THE TRUST FOR PUBLIC LAND, a California nonprofit public benefit corporation, whose principal place of business and post office address is The Trust For Public Land National Office, 116 New Montgomery St., 4th Floor, San Francisco, California 94105 ("Grantee");

WITNESSETH:

WHEREAS, Initial Grantor has conveyed its interest in the property more particularly described on Exhibit C attached hereto and incorporated by this reference (the "Property") to Edmund C. Olson, as Trustee of the Edmund C. Olson Trust No. 2 under agreement dated August 21, 1985 ("Fee Owner") by that certain Trustees' Limited Warranty Deed with Covenants dated December 20, 2005 ("Deed"), recorded in the Bureau of Conveyances of the State of Hawaii ("Bureau") as Document No. 2006-010985;

WHEREAS, pursuant to paragraph 1 of the Deed ("Reserved Right"), the Initial Grantor reserved the right to grant an easement over the Property in the form set forth below to Initial Grantor's successor in title to the two parcels of real property adjacent to the Property and more particularly described in Exhibit B attached hereto and incorporated herein by reference ("Wao Kele O Puna Property");

WHEREAS, by deed of even date, Grantee is the successor in title to the Initial Grantor's interest in the Wao Kele O Puna Property and Initial Grantor desires to grant this Grant of Easement to Grantee pursuant to the Reserved Right;

NOW, THEREFORE, Initial Grantor, for and in consideration of the sum of ONE AND NO/100 DOLLAR (\$1.00) paid to Initial Grantor by Grantee, receipt whereof is hereby acknowledged, and of the covenants hereinafter contained and on the part of Grantee, its successors and assigns to be observed and performed, do hereby grant unto Grantee, its successors and assigns, perpetual, nonexclusive easement rights as set forth below over, across, and through the road shown on the map attached hereto as Exhibit A and incorporated by this reference (the "Easement Area"), which crosses the Property.

Grantee acknowledges that upon the recording of this Grant of Easement at the Bureau, the Fee Owner, as the successor in title to the Initial Grantor's interest in the Property, shall be deemed and construed for all purposes of this Grant of Easement as the "Grantor", and the Initial Grantor shall have no further liability hereunder;

TO HAVE AND TO HOLD the same unto Grantee, its successors and permitted assigns, for access to the Wao Kele O Puna Property, subject to earlier termination pursuant to the terms and conditions contained herein.

SUBJECT, HOWEVER, to any and all existing uses, licenses, easements and other encumbrances, recorded or unrecorded; and

RESERVING, HOWEVER, unto Grantor, for the benefit of Grantor, its lessees, tenants, licensees and other occupants, all rights of Grantor with respect to the Easement Area, including but not limited to the rights specifically reserved to Grantor herein, other than as specifically conferred upon Grantee herein.

In consideration of the rights hereby granted and the acceptance thereof and the obligations hereby assumed, the parties mutually covenant and agree as follows:

1. Permitted Use of Easement Area. Grantee, its employees, representatives, consultants, contractors, invitees, tenants, licensees, agents, successors and assigns, shall use the Easement Area solely for access purposes to the extent necessary for ingress and egress of vehicular and pedestrian traffic to and from the Wao Kele O Puna Property, and for no other purpose. Grantee shall not have any rights to park cars on the Easement Area without the prior written consent of Grantor. If the land through which the Easement Area crosses is encumbered by a declaration of covenants, Grantee's use of the Easement Area shall at all times conform to all covenants and conditions contained in such declaration of covenants. Grantee shall not commit or cause to be committed any waste in or upon the Easement Area or maintain any public or private nuisance or any other action which may interfere with or disturb the quiet enjoyment of any surrounding property, nor shall Grantee permit the Easement Area to be used for any improper, offensive or unlawful purpose.

2. Maintenance. Grantor has no obligation to maintain the Easement Area. Grantee shall at all times exercise every reasonable precaution against damaging the property adjoining the Easement Area and shall immediately repair any such damaged property.

3. Observance of Laws and Other Requirements. Grantee shall at all times during the term of this Grant of Easement: (a) observe, perform and comply with all Applicable Laws now or hereafter made with respect to the Easement Area or use thereof; (b) maintain in effect all permits, approvals, licenses, consents or other entitlements required by Applicable Laws for Grantee's permitted use of the Easement Area hereunder; and (c) keep the Easement Area free from hazards and nuisances caused by Grantee's use of the Easement Area. Any failure by Grantee to comply with the requirements set forth in clauses (a) through (c) of the immediately preceding sentence shall be an event of default under this Grant of Easement. Grantee shall Indemnify (defined in paragraph 7 (Indemnity)) Grantor against all actions, suits, claims and damages by whomsoever brought or made by reason of the nonobservance or nonperformance of the requirements of: (i) all Applicable Laws, (ii) permits, approvals, licenses, consents or other entitlements for Grantee's use of the Easement Area, and (iii) this paragraph 3 (Observance of Laws and Other Requirements). As used herein the term "Applicable Laws," means all federal, state and local laws, statutes, ordinances, codes, rules, regulations, standards, directives, interpretations and conditions of approval, and all legislative, administrative or judicial orders, decrees, requirements, rulings or judgments, which now or in the future may be applicable to the land through which the Easement Area crosses, or to the use of the same.

4. Condition of Easement Area. Grantee confirms to Grantor that Grantee has made such investigation of facts concerning the physical condition of the Easement Area as Grantee has deemed appropriate. Grantee accepts the Easement Area in "as is" condition and acknowledges that Grantor have made no representations concerning the condition of the

Easement Area or the suitability or fitness of the Easement Area for any particular use or purpose. Grantee also acknowledges that the improvements, if any, within the Easement Area are or may be nonconforming under Applicable Laws. Grantee assumes all risks arising from any nonconforming improvements within the Easement Area.

5. Construction of Improvements. No improvements may be constructed on or adjacent to the Easement Area without the prior written consent of Grantor, which consent may be withheld in Grantor's sole discretion. Any approval by Grantor of such plans and specifications shall not be construed as an acknowledgment or representation by Grantor of the architectural, structural or legal sufficiency of the plans and specifications or of any improvements built in accordance therewith or of any other matter related to the plans and specifications or any improvements built in accordance therewith. Grantee shall be responsible for ascertaining the location of any other facilities within or adjacent to the Easement Area prior to undertaking any construction within the Easement Area, and Grantee shall be solely responsible for any and all damage caused to other facilities or resulting from damage to such other facilities which may be within or adjacent to the Easement Area. Upon completion of any construction within the Easement Area, Grantee shall provide Grantor, at Grantee's sole expense, with a complete set of plans and specifications for the entirety of such construction certified by Grantee's engineer or other duly licensed consultant (i) as showing the completed construction "as built", and (ii) as being in substantial compliance with the approved plans and specifications.

6. Limitation of Liability. Grantor shall not be liable or responsible for any loss or damage sustained by the Grantee or anyone claiming through or under Grantee because of the acts or omissions of Grantee or any lessee, tenant, licensee, invitee or other occupant of Grantor's lands through which the Easement Area crosses, or because of any act or omission of any adjacent landowner(s), its/their lessees, tenants, licensees or other occupants.

7. Indemnity. Grantee shall Indemnify Grantor, to the extent permitted by law, from and against any and all actions, suits, losses, costs, damages, liabilities or claims thereof, including reasonable attorneys' fees, arising out of or in connection with any loss or damage to property and/or injury to or death of persons arising out of or resulting from the acts or omissions of Grantee or anyone claiming by, through or under Grantee in connection with the exercise of the rights or privileges granted hereunder, or arising out of or in connection with any improvements that Grantee constructs within the Easement Area. Grantee's obligations to Indemnify Grantor under this paragraph 7 (Indemnity), under paragraph 3 (Observance of Laws and Other Requirements) and under paragraph 9 (Liens) shall survive the termination of this Grant of Easement and shall be binding upon Grantee, its successors and permitted assigns. As used herein, the term "Indemnify" means the protection of a party, by a money payment if necessary, against out-of-pocket loss. The term shall include an obligation by the indemnitor to defend and hold the indemnitee harmless (with counsel acceptable to the indemnitee) in connection with any claim against which the Indemnity operates. The obligation to Indemnify shall specifically include, but shall not be limited to payment of all reasonable costs and expenses paid by the indemnitee or reasonably anticipated to be incurred by the indemnitee for the indemnitee's defense, including without limitation, reasonable attorneys' fees and costs, and all other consultants' reasonable fees and costs. An Indemnity shall also specifically include all reasonable costs for research regarding settlement or other preventive measures undertaken by the indemnitee with regard to any such claim. The foregoing obligation to Indemnify shall not apply to any action, suit, loss, cost, damages, liabilities or claim which is caused by the acts or omission of Grantor or its affiliates or their employees, tenants, licensees, agents contractors or

representatives if a Court issues a final non-appealable order or judgment that the primary cause of any related damage was Grantor's gross negligence or willful misconduct.

8. Insurance. At Grantee's own expense, Grantee shall maintain a policy or policies of general liability insurance covering the Easement Area and all of Grantee's operations conducted therefrom, in an amount of at least ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) for each occurrence, with deductibles of no more than TWENTY FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00) for each occurrence, and naming Grantor as an additional insured. From time to time, but no less frequently than once per year, Grantee shall provide Grantor with evidence reasonably satisfactory to Grantor that Grantee has the insurance coverage required by this paragraph 8 (Insurance), and that Grantor are an additional insured thereunder.

9. Liens. Grantee shall not commit or suffer any act or neglect whereby the Easement Area becomes subject to any attachment, judgment, lien, charge or encumbrance whatsoever, and shall indemnify Grantor from and against any and all loss, liability, claim or demand for damage or injury with respect thereto.

10. Abandonment, Termination or Relocation. In the event (i) Grantee enters into a written agreement with Grantor abandoning its use of the Easement Area, (ii) the Easement Area is realigned or relocated in accordance with paragraph 17 (Grantor's Reservations), or (iii) the Easement Area is dedicated to and accepted by any governmental authority, this Grant of Easement shall automatically terminate, and Grantee shall, at Grantor's request, at any time after said abandonment, termination, relocation or dedication, execute such documents as Grantor reasonably requests for the purpose of terminating this Grant of Easement. Grantee hereby agrees that on or before the termination or cancellation of this Grant of Easement, or within a reasonable period following such termination or cancellation, Grantee will remove its own improvements to the Easement Area and will restore the Easement Area to the condition existing at the time of entry thereon, reasonable wear and tear from normal usage or damage by unavoidable casualty excepted.

11. Condemnation. If any rights to use the Easement Area are taken or condemned in whole or part, or if the Easement Area is taken or condemned in whole or part, by any authority having the power of eminent domain, all compensation and damages awarded on account of the condemnation or taking shall be payable to Grantor, their lessees, tenants, licensees or other occupants, if any, as their interests appear, without any apportionment to Grantee.

12. Default and Remedies. If either party fails to perform any of the terms, covenants and agreements contained herein, if such failure continues for a period of ten (10) days after written notice, then the non-defaulting party shall be entitled to all remedies available to it at law or equity, including by way of example and not in limitation thereof, the right to sue such person for specific performance, injunctive relief and/or monetary damages, including without limitation, reasonable attorneys' fees, costs and expenses. Notwithstanding the foregoing, the parties agree that this grant may not be terminated except as provided in paragraph 10 above.

13. Cure by Grantor. Whenever under any provision of this Grant of Easement, Grantee is obligated to make payment or expenditure or to do any act or thing, or to incur any liability whatsoever, and Grantee, after demand for performance has been made to Grantee by Grantor, fails, refuses or neglects to perform as herein required, Grantor shall be

entitled but shall not be obligated to make any such payment or expenditure, or to do any such act or thing, or to incur any such liability, all on behalf of and at the cost and for the benefit of Grantee, and in such event the amount thereof shall be due to and at the option of and upon demand by Grantor, together with interest on any such amounts unpaid, at a rate equal to twelve percent (12%) per annum (but in no event more than the maximum per annum rate of interest permitted to be charged by then Applicable Laws), and Grantee shall reimburse Grantor for any and all loss, damage or expense, including reasonable attorneys' fees, which Grantor may suffer or be put to by reason thereof. Nothing contained herein shall prevent Grantor, at the cost of and for the benefit of Grantee, from satisfying any judgment, liability or lien, as the case may be, in the event Grantee fails or refuses to satisfy the same as herein provided.

14. Expenses of Enforcement. If Grantor or Grantee brings any legal proceeding to enforce any of the terms, covenants or conditions hereof, the unsuccessful party in such proceeding shall pay the prevailing party's costs and expenses, including reasonable attorneys' fees, incurred in the bringing or defending of such proceeding.

15. Remedies Cumulative. The remedies set forth herein shall be in addition to remedies otherwise applicable or provided herein or otherwise available at law or in equity, it being understood that all rights and remedies shall always be non-exclusive and cumulative and that the exercise of one remedy or form of relief available hereunder shall not be exclusive of, or constitute a waiver of, any other.

16. No Waiver. The failure in any case to enforce the provisions of any covenant, condition, restriction, obligation or charge of this Grant of Easement shall not constitute a waiver of any right to enforce any such provision of this Grant of Easement in any other case.

17. Grantor's Reservations. Any other provision herein notwithstanding, and in addition to any other reservations set forth herein, this Grant of Easement is subject to the reservation of Grantor of the following rights, to which Grantee hereby consents: (i) the right from time to time to realign or relocate the Easement Area, at Grantee's own cost (including, without limitation, all costs to realign or relocate Grantee's improvements, if any, within the Easement Area), as development or use of the surrounding lands may require, provided that upon completion of such realignment or relocation, the Grantor shall enter into a grant of easement with Grantee for such realigned or relocated Easement Area, which new grant of easement shall be in substantially the same form as this Grant of Easement; (ii) the right to subdivide all or any portion of the land through which the Easement Area crosses into lots or to consolidate all or any portion of such land with adjoining land and to resubdivide the same into lots at Grantor's expense; (iii) the right to utilize or to permit others to utilize the Easement Area, provided that such use does not unreasonably interfere with Grantee's use of the same; and (iv) the right to make one or more irrevocable, nonexclusive grants or assignments of nonexclusive rights in the Easement Area from time to time to any person, including without limitation, governmental authorities, public or private utilities, or others.

18. Grantee's Waiver of Additional Access Rights. Grantee expressly waives any claim to access over other lands owned by Grantor whether by implication, necessity or otherwise.

19. Partial Invalidity. If any term, provision, covenant or condition of this Grant of Easement or the application thereof to any person or circumstances shall to any extent, be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder

of this Grant of Easement, or the application of such term, provision, covenant or condition of this Grant of Easement to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term or provision of this Grant of Easement shall be valid and enforceable to the fullest extent permitted by law.

20. Binding Effect. All the terms, covenants and conditions of this Grant of Easement shall run with the land and shall inure to the benefit of and be binding upon the successors, successors in trust and assigns of Grantor and the heirs, devisees, personal representatives, successors and assigns of Grantee to the same extent as said terms, covenants and conditions inure to the benefit of and are binding upon Grantor and Grantee, respectively.

21. Grammar. The necessary grammatical changes required to make the provision of this Grant of Easement apply in the plural sense where there is more than one grantee and to either corporations, associations, partnerships, or individuals, males or females, shall in all instances be assumed as though in each case fully expressed.

22. Governing Law. The laws of the State of Hawaii shall govern the validity, performance and enforcement of this Grant of Easement.

23. Amendment. This Grant of Easement may only be amended in writing, executed by both Grantor and Grantee.

24. Estate's Liability. Any liability which may arise as a consequence of the execution of this instrument by or on behalf of the Trustees under the Will and of the Estate of James Campbell, Deceased, shall be a liability of the Estate of James Campbell, Deceased, and not the personal liability of any trustee or employee of the Estate of James Campbell.

[This space left blank intentionally; signatures on following page]

IN WITNESS WHEREOF, the undersigned have executed this instrument the day and year first above written.

Grantee:
THE TRUST FOR PUBLIC LAND, a
California nonprofit public benefit corporation

By Brian R. Kuchoff
Name: BRIAN R. KIRCHOFF
Its: REGIONAL COUNSEL

Initial Grantor:
TRUSTEES UNDER THE WILL AND OF
THE ESTATE OF JAMES CAMPBELL,
DECEASED, acting in their fiduciary and not
in their individual capacities

IN WITNESS WHEREOF, the undersigned have executed this instrument the day and year first above written.

Grantee:

THE TRUST FOR PUBLIC LAND, a
California nonprofit public benefit corporation

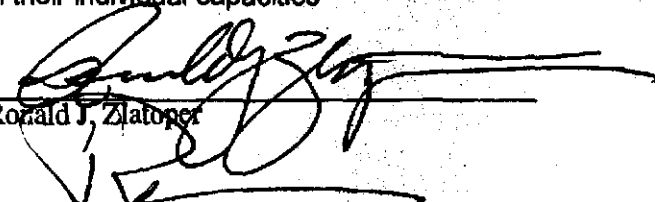
By _____
Name:
Its:

Approved as to Form
CARLSMITH BALL LLP


By _____


Initial Grantor:

TRUSTEES UNDER THE WILL AND OF
THE ESTATE OF JAMES CAMPBELL,
DECEASED, acting in their fiduciary and not
in their individual capacities



Ronald J. Zlatoper

Richard W. Gushman, D


C. R. Churchill

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

SS:

On this 5th day of July, before me personally appeared ~~D.A. HEENAN, C.R. CHURCHILL, RICHARD W. GUSHMAN, II and RONALD J. ZLATOPER~~ ^{W.P.}, the duly appointed, qualified and acting **TRUSTEES UNDER THE WILL AND OF THE ESTATE OF JAMES CAMPBELL, DECEASED**, acting in their fiduciary and not in their individual capacities, to me known to be the persons described in and who severally executed the foregoing instrument, and severally acknowledged that they executed the same as their free act and deed as such Trustees.

LS

Lydia L. Hannemann
 Name: Lydia L. Hannemann
 Notary Public, State of Hawaii

My commission expires: February 11, 2008

ACKNOWLEDGEMENT

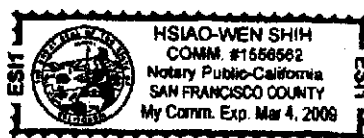
State of California
County of San Francisco

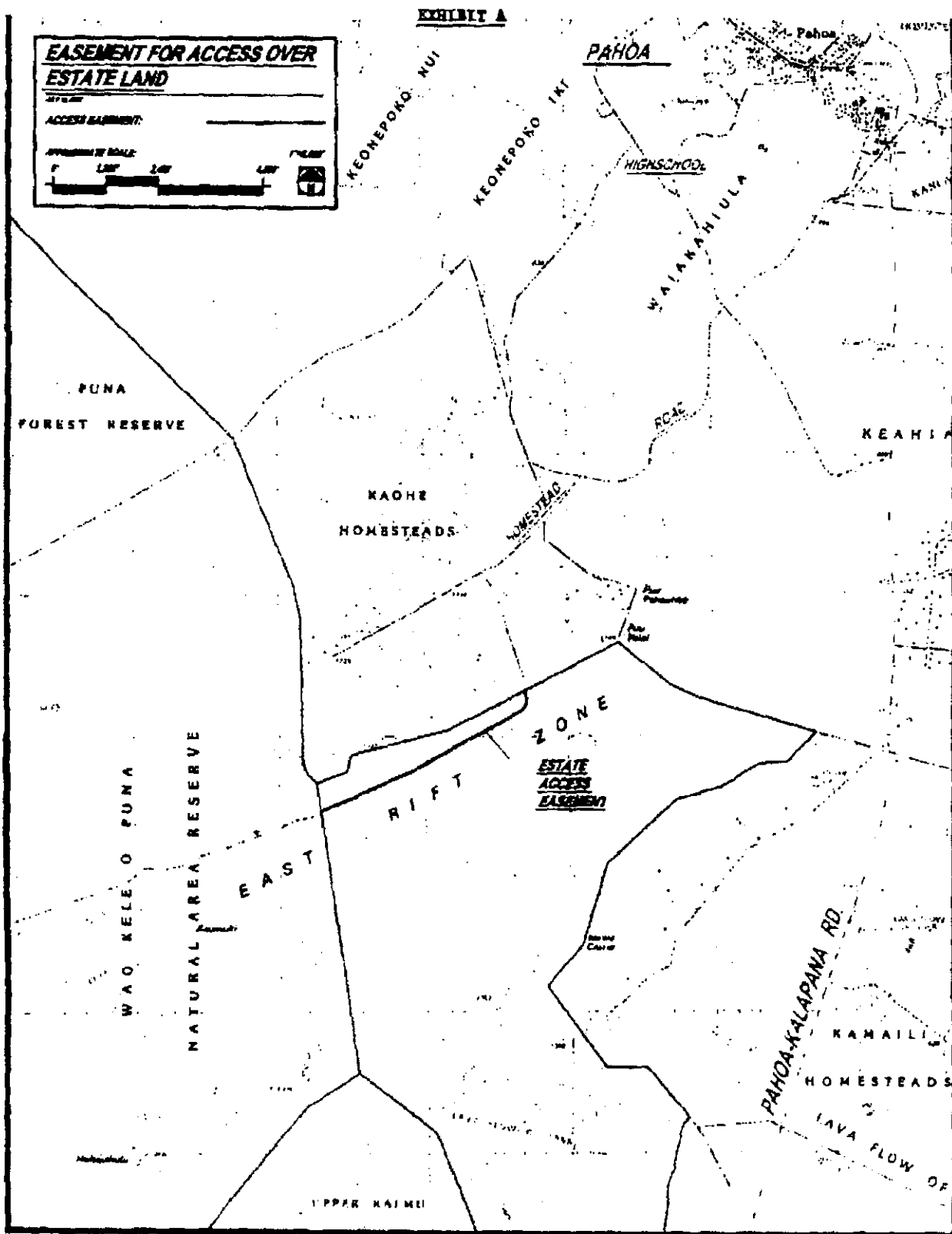
On this 11th day of July, 2006, before me, **Hsiao-Wen Shih**, a notary public, personally appeared **Brian R. Kirchoff** personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~) and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____

Hsiao-Wen Shih





**EXHIBIT B
TO GRANT OF EASEMENT FOR ACCESS RIGHTS**

WAO KELE O PUNA PROPERTY DESCRIPTION

-PARCEL ONE:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Land Patent Grant Number S-15,666 to The Trustees under the Will and of the Estate of James Campbell, deceased) situate, lying and being at Puna, Island and County of Hawaii, State of Hawaii, being PARCEL A, same being portions of the Government Land of Makuu, Kaohe, Kaimu, Kehena, Kapaahu and Kamaili (C.S.F No. 20,315 dated December 13, 1985), and thus bounded and described as per survey of Raymond S. Nakamura, Land Surveyor, with the Survey Division, Department:

Beginning at the west corner of this parcel of land and on the south boundary of Land Court Application 1053, the coordinates of said point beginning referred to Government Survey Triangulation Station "OLAA" being 47,769.67 feet South and 8,228.41 feet West, thence running by azimuths measured clockwise from true South:

- | | | | | |
|-----|------|-----|-----|--|
| 1. | 240° | 05' | 12" | 24,288.19 feet along Land Court Application 1053; |
| 2. | 345° | 23' | 30" | 1,348.57 feet along the remainder of Government Lands; |
| 3. | 313° | 00' | | 1,221.60 feet along the remainder of Government Lands; |
| 4. | 330° | 16' | | 4,682.10 feet along the remainder of Government Lands; |
| 5. | 262° | 03' | | 1,960.70 feet along the remainder of Government Lands; |
| 6. | 290° | 02' | | 627.40 feet along the remainder of Government Lands; |
| 7. | 314° | 28' | | 4,581.80 feet along the remainder of Government Lands; |
| 8. | 314° | 47' | | 744.40 feet along the remainder of Government Lands; |
| 9. | 314° | 12' | | 735.30 feet along the remainder of Government Lands; |
| 10. | 315° | 31' | | 1,825.53 feet along the remainder of Government Lands; |
| 11. | 40° | 41' | | 13.81 feet along the north side of 20-Foot Road; |
| 12. | 338° | 15' | | 14.99 feet along the west side of 20-Foot Road; |
| 13. | 60° | 05' | 12" | 25,840.22 feet along Parcel B of Government Lands; |
| 14. | 140° | 23' | | 16,220.18 feet along Parcel B of Government Lands to the point of beginning and containing an area of 9,012 acres, more or less. |

-PARCEL TWO:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Land Patent Grant Number S-15,666 to The Trustees under the Will and of the Estate of James Campbell, deceased) situate, lying and being at Puna, Island and County of Hawaii, State of Hawaii, being PARCEL B, same being portions of Government Land of Makuu, Kaohe, Kaimu, Kehena, Kapaahu and Kamaili (C.S.F. No. 20,316 dated December 13, 1985), and thus bounded and described as per survey of Raymond S. Nakamura, Land Surveyor, with the Survey Division, Department:

Beginning at the west corner of this parcel of land and at an angle on the south boundary of Land Court Application 1053, the coordinates of said point of beginning referred to Government Survey Triangulation Station "OLAA" being 55,748.70 feet South and 22,096.90 feet West, thence running by azimuths measured clockwise from true South:

1. 240° 05' 12" 16,000.00 feet along Land Court Application 1053;
2. 320° 23' 16,220.18 feet along Parcel A of Government Lands;
3. 240° 05' 12" 25,840.22 feet along Parcel A of Government Lands;
4. 338° 15' 3,262.76 feet along the west side of the 20-Foot Road;
5. 340° 23' 19.26 feet along the west side of the 20-Foot Road;
6. 342° 31' 250.51 feet along the west side of the 20-Foot Road;
7. 337° 27' 156.17 feet along the west side of the 20-Foot Road;
8. 347° 14' 271.04 feet along the west side of the 20-Foot Road;
9. 348° 38' 331.85 feet along the west side of the 20-Foot Road;
10. 353° 51' 125.10 feet along the west side of the 20-Foot Road;
11. 359° 30' 1,278.10 feet along the west side of the 20-Foot Road;
12. 358° 59' 2,128.77 feet along the west side of the 20-Foot Road;
13. 332° 38' 221.69 feet along the west side of the 20-Foot Road;
14. 315° 33' 287.92 feet along the west side of the 20-Foot Road;
15. 258° 17' 9.45 feet along the south side of the 20-Foot Road;
16. 352° 29' 6,915.35 feet along Parcel C of Government Lands;

- | | | | | |
|-----|------|-----|-----|--|
| 17. | 56° | 27' | | 1,460.60 feet along Lots 3-B and 3-A of Upper Kaimu Homesteads; |
| 18. | 39° | 38' | | 3,534.10 feet along Lot 3-A of Upper Kaimu Homesteads, Grant 6571 to K. Kamakani, Grant 6330 to S. Kamelamela and Grant 6328 to D. Kamelamela; |
| 19. | 53° | 04' | | 10,520.90 feet along Government Lands; |
| 20. | 53° | 31' | 30" | 9,863.30 feet along Grant 9275 to H. M. Holt, et al., Trustees under the Will and of the Estate of James Campbell, Deceased; |
| 21. | 148° | | 00' | 4,100.00 feet along R.P. 8030, L.C.Aw. 8559-B, Ap. 14 to William C. Lunailo; |
| 22. | 116° | | 00' | 8,150.00 feet along R.P. 8030, L.C.Aw. 8559-B, Ap. 14 to William C. Lunailo; |
| 23. | 126° | 59' | | 25,105.30 feet along R.P. 8030, L.C.Aw. 8559-B, Ap. 14 to William C. Lunailo to the point of beginning and containing an area of 16,843.891 acres, more or less. |

SUBJECT, HOWEVER, as to PARCELS ONE and TWO above, to the following:

1. Terms, provisions covenants, conditions and reservations contained in Land Patent Grant Number S-15,666, including, but not limited to, matters relating to reservation of minerals, water and prehistoric and historic remains.

2. Final Judgment; Exhibits "A" and "B" dated August 26, 2002, filed in the Circuit Court of the Third Circuit, State of Hawaii, 89-089, on August 26, 2002, and recorded in the Bureau of Conveyances of the State of Hawaii on September 16, 2002 as Document No. 2002-163259, against the Estate of James Campbell, Deceased; W.H. McVay and P.R. Cassiday, in their fiduciary capacity as Trustees under the Will and the Estate of James Campbell, in favor of Pele Defense Fund.

Tax Map Keys: Hawaii 1-2-10-2 (PARCEL ONE)
Hawaii 1-2-10-3 (PARCEL TWO)

End of Exhibit B

**EXHIBIT C
TO GRANT OF EASEMENT FOR ACCESS RIGHTS**

PROPERTY DESCRIPTION

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Land Patent Grant Number S-15,666 to The Trustees under the Will and of the Estate of James Campbell, deceased) situate, lying and being at Puna, Island and County of Hawaii, State of Hawaii, being PARCEL C, same being portions of the Government Land of Kamaili, Kahena and Kikala (C.S.F No. 20,317 dated December 13, 1985), and thus bounded and described as per survey dated December 13, 1985, to wit:

Beginning at the east corner of this parcel of land, on the south boundary of Royal Patent 4475, Land Patent 8199, Land Commission Award 7713, Apana 13 to V. Kamamalu and at the north corner of Grant 7365 to J. K. Pau, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALIU" being 115.60 feet south and 9,325.70 feet west, thence running by azimuths measured clockwise from true South:

- | | | | | |
|-----|------|-----|----------|--|
| 1. | 46° | 00' | 982.00 | feet along Grant 7365 to J. K. Pau; |
| 2. | 85° | 00' | 652.00 | feet along Grant 7365 to J. K. Pau; |
| 3. | 58° | 45' | 1,050.00 | feet along Grant 7365 to J. K. Pau; |
| 4. | 73° | 30' | 1,005.00 | feet along Grant 7547 to Wm. K. Kelihoomalulu; |
| 5. | 45° | 46' | 1,197.50 | feet along Grant 7547 to Wm. K. Kelihoomalulu; |
| 6. | 139° | 03' | 50.08 | feet along the north side of 50-Foot Road; |
| 7. | 45° | 46' | 1,064.16 | feet along the west side of 50-Foot Road; |
| 8. | 16° | 10' | 2,051.31 | feet along the west side of 50-Foot Road; |
| 9. | 38° | 34' | 1,319.67 | feet along the west side of 50-Foot Road; |
| 10. | 323° | 16' | 2,381.65 | feet along the south side of 50-Foot Road; |
| 11. | 270° | 00' | 981.59 | feet along the south side of 50-Foot Road; |
| 12. | 316° | 30' | 1,493.59 | feet along the south side of 50-Foot Road to the northwest side of Upper Puna Road; |
| 13. | | | | Thence along the northwest side of Upper Puna Road, the direct azimuth and distance being: |
| | 27° | 43' | 20" | 4,458.54 feet; |

14. 55° 41' 15" 171.71 feet along the northwest side of Upper Puna Road;
15. Thence along the northwest side of Upper Puna Road on a curve to the right with a radius of 150.00 feet, the chord azimuth and distance being:
 79° 01' 15" 118.81 feet;
16. 102° 21' 15" 518.59 feet along the northwest side of Upper Puna Road;
17. Thence along the northwest side of Upper Puna Road on a curve to the left with a radius of 250.00 feet, the chord azimuth and distance being:
 77° 01' 15" 213.94 feet;
18. 51° 41' 15" 284.74 feet along the northwest side of Upper Puna Road;
19. Thence along the northwest side of Upper Puna Road on a curve to the right with a radius of 475.00 feet, the chord azimuth and distance being:
 55° 01' 15" 55.24 feet;
20. 58° 21' 15" 354.39 feet along the northwest side of Upper Puna Road;
21. Thence along the northwest side of Upper Puna Road on a curve to the left with a radius of 450.00 feet, the chord azimuth and distance being:
 50° 46' 15" 118.77 feet;
22. 135° 50' 1,250.91 feet along Grant 7731 to L. K. Swain;
23. 157° 30' 3,467.50 feet along Grant 7593 to Louisa Swain, Grant 7478 to L. E. Blaisdell and the northwest end of 50-Foot Road;
24. 127° 35' 2,173.00 feet along Lot III-B of Upper Kaimu Homesteads;
25. 172° 29' 6,915.35 feet along Parcel B of Government Lands;

26.	258°	17'	139.94	feet along the south side of 20-Foot Road;
27.	244°	12'	614.60	feet along the south side of 20-Foot Road;
28.	195°	08'	397.80	feet along the south side of 20-Foot Road;
29.	254°	12'	783.69	feet along the south side of 20-Foot Road;
30.	254°	05'	1,202.89	feet along the south side of 20-Foot Road;
31.	254°	48'	283.02	feet along the south side of 20-Foot Road;
32.	242°	35'	876.64	feet along the south side of 20-Foot Road;
33.	245°	28'	581.05	feet along the south side of 20-Foot Road;
34.	242°	17'	539.85	feet along the south side of 20-Foot Road;
35.	246°	20'	20.81	feet along the south side of 20-Foot Road;
36.	240°	31'	1,658.87	feet along the south side of 20-Foot Road;
37.	240°	47'	707.62	feet along the south side of 20-Foot Road;
38.	309°	05'	1,550.70	feet along R. P. 4475, R. P. 6883, L. P. 8200, L. C. Aw. 7713, Ap. 14 to V. Kamamalu;
39.	296°	22'	753.00	feet along R. P. 4475, R. P. 6883, L. P. 8200, L. C. Aw. 7713, Ap. 14 to V. Kamamalu;
40.	286°	00'	2,750.00	feet along R. P. 4475, L. P. 8199, L. C. Aw. 7713, Ap. 13 Kamamalu to the point of beginning and containing an area of 1,930 acres, more or less.

Tax Map Key: Hawaii 1-2-10-1

End of Exhibit C



R-1019 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
JAN 18, 2006 10:00 AM
Doc No(s) 2006-010985



/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

32 1/2 Z9

CTax (30): \$7200.00

LAND COURT

REGULAR SYSTEM

Return By Mail ☒ Pick-Up ☐ To:

CARLSMITH BALL LLP
ASB Tower, Suite 2200
1001 Bishop Street
Honolulu, Hawaii 96813
Attention: Eric A. James
Telephone: 808.523.2500

TGOH 200544335- 5
TGES A5-101-3127
BARBARA PAULO

RS-1

TITLE OF DOCUMENT:

TRUSTEES' LIMITED WARRANTY DEED WITH COVENANTS

PARTIES TO DOCUMENT:

GRANTORS: C.R. CHURCHILL, D.A. HEENAN, RICHARD W. GUSHMAN, II and
RONALD J. ZLATOPER, the duly appointed, qualified and acting
TRUSTEES UNDER THE WILL AND OF THE ESTATE OF JAMES
CAMPBELL, DECEASED, acting in their fiduciary and not in their
individual capacities

GRANTEE: EDMUND C. OLSON, as Trustee of the EDMUND C. OLSON TRUST
NO. 2 under agreement dated August 21, 1985
A-American Self Storage
11560 Tennessee Avenue
West Los Angeles, California 90064

TAX MAP KEY(S): Hawaii 1-2-10-1

(This document consists of 32 pages.)

RECORDER'S MEMO

Document Text NOT Legible For Digital Imaging

TRUSTEES' LIMITED WARRANTY DEED WITH COVENANTS

KNOW ALL MEN BY THESE PRESENTS:

That C.R. CHURCHILL, D.A. HEENAN, RICHARD W. GUSHMAN, II and RONALD J. ZLATOPER, the duly appointed, qualified and acting TRUSTEES UNDER THE WILL AND OF THE ESTATE OF JAMES CAMPBELL, DECEASED, acting in their fiduciary and not in their individual capacities (the "Grantors"), whose principal place of business and mailing address is 1001 Kamokila Boulevard, Kapolei, Hawaii 96707, in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other valuable consideration previously paid to Grantors by EDMUND C. OLSON, as Trustee of the EDMUND C. OLSON TRUST NO. 2 under agreement dated August 21, 1985 (the "Grantee"), whose business and mailing address is c/o A-American Self Storage, 11560 Tennessee Avenue, West Los Angeles, California 90064, the receipt and sufficiency of which is hereby acknowledged by the Grantors, and upon and subject to the covenants and conditions herein set forth, do hereby GRANT, BARGAIN, SELL, and CONVEY unto Grantee, its successors and assigns, forever, that certain parcel of real estate (the "Property") situated at Puna, Island and County of Hawaii, State of Hawaii, and more particularly described in Exhibit A attached hereto and made a part hereof, subject to the reservations and encumbrances herein and in Exhibit A attached hereto and made a part hereof:

1. Grantors' Reserved Right. Grantors hereby excepts and reserves unto itself, its successors and assigns, a perpetual nonexclusive access (vehicular and pedestrian) easement over, across, and through the road shown on the map attached hereto as Exhibit B and incorporated herein by reference ("Access Easement Area"): (i) the right of ingress and egress to and from the Access Easement Area for the use and benefit of the lands adjacent to the Access Easement Area, two parcels of real property of approximately 25,855.891 acres and 890.283 acres, designated as Tax Map Key Nos. (Hawaii) 1-2-10-2, 1-2-10-3, 1-1-1-16, 1-1-1-17, 1-1-1-20 ("Wao Kele O Puna Property") for so long as Grantors, their successors and assigns own the Wao Kele O Puna Property; and (ii) the right to grant a grant of easement for access purposes in the form of Exhibit C attached hereto ("Grant of Easement") to Grantors' successor in title to the Wao Kele O Puna Property at the time of their conveyance of such property. Grantors, their successors, and assigns may exercise all of the rights reserved hereunder without the consent or joinder of any other person. Grantors' reserved right under this paragraph 1 (Grantors' Reserved Right) shall terminate upon Grantors' execution and recordation in the Bureau of Conveyances of the State of Hawaii of the Grant of Easement.

2. Property in "As Is, Where Is" Condition.

a. No Warranties. Except as specifically set forth in that certain Acquisition Agreement dated as of September 19, 2005 between Grantors and Grantee, it is expressly understood and agreed that Grantors have not made any representation or warranty, express or implied, regarding any aspect of the Property including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose, suitability, habitability, quality, physical condition and value, and Grantors hereby disclaim any and all liability for any and all such representations and warranties. Grantee agrees that it has examined and investigated the Property prior to the execution of this instrument and that Grantee has relied solely upon such examinations and investigations in acquiring the Property. Without limiting the generality of the foregoing, Grantee acknowledges that (i) it has made all inspections, investigations and

analyses deemed necessary or appropriate to determine compliance by the Property with all environmental or other applicable laws that may apply to the Property and (ii) Grantors have made no representation or warranty, express or implied, concerning the Property's compliance with environmental or other applicable laws.

b. "As Is" Condition. Grantee acknowledges and agrees that it is acquiring the Property in its "as is, where is" condition, with all faults, if any, and that Grantee has assumed all risks regarding all aspects of the Property, and the condition thereof, including, without limitation: (i) the risk of any physical condition affecting the Property including, without limitation, the existence of any hazardous materials, the existence of any soils or environmental conditions, or the existence of archeological or historical conditions on the Property; (ii) the risk of any damage or loss to the Property caused by any means including, without limitation, flood or earthquake; and (iii) the risk of use, zoning, habitability, merchantability or quality of the Property or the suitability of the Property for its present use or future development; and (iv) the activities of Grantors and others on adjacent or other nearby lands.

c. Release. Grantee, for itself and its successor and assigns, expressly releases Grantors, their successors, successors in trust and assigns, from any and all liability and claims that Grantee, its successors and assigns may have against Grantors, their successors, successors in trust and assigns with regard to: (i) known Hazardous Materials (as defined in paragraph 5 (Definitions)) existing on the Property on or before the Conveyance Date (as defined in paragraph 6 (Conveyance Date)) of which Grantee is actually aware, (ii) Hazardous Materials released, leaked, spilled, overflow, discharged or emitted on or from the Property at any time from and after the Conveyance Date, or otherwise resulting from occupancy or operation of the Property by Grantee or by Grantee's agents, and (iii) Hazardous Materials migrating, entering or leaking onto, above or beneath the Property at any time from and after the Conveyance Date from any adjoining or nearby land over which Grantors has released its possessory interest and control (through ground lease, license, easement or otherwise) or in which Grantors has no ownership interest at the time the Hazardous Materials were released on the nearby or adjoining land. Grantors acknowledges that the foregoing release does not extend to liability and claims for personal injury or property damage that are based on tort law.

d. Indemnity. Grantee shall indemnify (as this term is defined in paragraph 5 (Definitions)) Grantors, their successors, successors in trust and assigns from and against any and all claims and demands for loss or damage, including claims for personal injury, property damage or wrongful death, arising at any time on or after the Conveyance Date, as a direct or indirect result of or in connection with Hazardous Materials caused or permitted by Grantee or by Grantee's agents at any time on or after the Conveyance Date to be released, leaked, spilled, overflow, discharged or emitted on or from the Property, or otherwise resulting from occupancy or operation of the Property by Grantee or by Grantee's agents. Grantee's Indemnity contained in this paragraph 2.d (Indemnity) shall not be construed to apply to clean up of, or any consequential damages related to any contamination resulting from or attributable to: (i) any unknown Hazardous Materials existing on the Property on or before the Conveyance Date; or (ii) any Hazardous Materials migrating, entering or leaching onto, above, or beneath the Property at any time from and after the Conveyance Date from any adjoining or nearby land over which Grantee has no control or in which Grantee has no ownership interest. Grantee shall bear the burden of proof of establishing that the conditions set forth in the immediately preceding sentence apply, so as to relieve Grantee of its Indemnity obligations under this paragraph 2.d (Indemnity).

3. Adjacent Land Use. Grantee acknowledges and agrees for itself, its permitted assigns, transferees, and any other party claiming by, through or under it that: (i) Grantors have entered and may further enter into agreements with others for development and use of other lands owned by or formerly owned by Grantors located adjacent to or near the Property; (ii) such agricultural, developmental, commercial and other activities may involve by way of example and not in limitation thereof, noise, smoke, soot, dust, lights, noxious vapors, odors, and other nuisances of every description arising from or incidental to the activities conducted from time to time on adjacent or other nearby lands, subject only to zoning and other legal restrictions on use; and (iii) Grantee is acquiring the Property subject to all risks associated with the location of the Property. The foregoing shall not prevent Grantee from pursuing all remedies legally available to Grantee in the event of any violation of zoning or other legal restrictions on use.

4. Government Approvals. Grantee acknowledges that Grantors have made and make no representations regarding Grantee's ability to obtain or retain the zoning, governmental approvals or permits necessary to use, occupancy or further development of the Property.

5. Definitions. As used herein: "Environmental Laws" means all federal, state and local laws, statutes, ordinances, codes, rules, regulations, standards, directives, interpretations and conditions of approval, and all legislative, administrative or judicial orders, decrees, requirements, rulings or judgments, which now or in the future may be applicable to the protection of human or animal health or safety, or to the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, the Resource Conservation and Recovery Act as amended by the Solid and Hazardous Waste Amendments of 1984, the Federal Insecticide, Fungicide and Rodenticide Act, as amended, the Hazardous Materials Transportation Act, the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act, the Safe Drinking Water Act, as the same may be amended from time to time, and any similar federal, Hawaii state (including without limitation Hawaii Revised Statutes Chapters 128D and 342B through 342P, inclusive) and local laws and ordinances, and regulations now or hereafter adopted, accomplished and promulgated pursuant thereto. "Hazardous Materials" as used herein, whether or not specifically defined or identified by applicable laws, shall mean and include, without limitation, oil or petroleum products or their derivatives, solvents, explosive substances, radioactive materials, asbestos, inflammable explosives, organic compounds (including polychlorinated biphenyl), pollutants, contaminants, hazardous wastes, toxic substances or related materials and any other toxic, ignitable, reactive, corrosive or related materials and any substances defined as or included in the definitions for "hazardous substances", "hazardous wastes", "extremely hazardous wastes", "hazardous materials", or "toxic substances" in the Environmental Laws. As the context requires, as used in this instrument, the term "Indemnify" means the protection of a party, by a money payment if necessary, against out-of-pocket loss. The term shall include an obligation by the indemnitor to defend and hold the indemnitee harmless (with counsel reasonably acceptable to the indemnitee) in connection with any claim against which the indemnity operates. The obligation to Indemnify shall specifically include, but shall not be limited to payment of (or in the alternative, reimbursement of) all costs and expenses paid by the indemnitee or reasonably anticipated to be incurred by the indemnitee for the indemnitee's defense, including without limitation, reasonable attorneys' fees and costs, and all other consultants' reasonable fees and costs. An Indemnity shall also specifically include all costs for research regarding settlement or other preventive measures undertaken by the indemnitee with regard to any such claim.

6. Conveyance Date. As used herein, the term "Conveyance Date" shall be the date upon which this instrument is recorded in the Bureau of Conveyances of the State of Hawaii.

7. Covenants Run with the Land. The restrictions, covenants, reservations, limitations, conditions and agreements of the Grantee set forth in this Deed shall run with the land described in Exhibit A attached hereto, shall be binding upon the Grantee and the Grantee's successors and assigns, including without limitation, any future owners, tenants, mortgagees, or other encumbrancers of all or any portion of the Property, and shall run in favor of and inure to the benefit of the Grantors, and the Grantors' successors, successors in trust and assigns.

8. Standing. Grantors own and may own lands adjacent to or nearby the Property. The value of such lands are or may be maintained and enhanced by the use of the Property in accordance with the terms of this instrument. From and after the Conveyance Date, each owner of the Property, by taking title thereto, for itself and its successors and assigns, acknowledge and agree that Grantors, notwithstanding any lack of a legal property interest in the Property or any portion thereof, shall have "standing" in the legal sense to enforce the covenants, conditions, and restrictions of this instrument.

9. No Third Party Beneficiaries; Enforcement. This instrument is not intended, and shall not be deemed or construed, to confer any rights, power or privileges on any person or entity other than Grantors, their successors, successors in trust and assigns. The reservations, limitations, restrictions, covenants and conditions set forth herein can only be enforced by Grantors, their successors, successors in trust and assigns.

10. Attorneys' Fees. In the event of a dispute under this instrument, the prevailing party shall be entitled to recover from the losing party all costs including reasonable attorneys' fees.

11. Governing Law. This instrument shall be governed by laws of the State of Hawaii.

12. Perpetuities. If any of the reservations, limitations, restrictions, covenants or conditions set forth herein shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

13. Effect of Invalidity. The reservations, limitations, restrictions, covenants and conditions set forth herein shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof, of any such reservations, limitations, restrictions, covenants or conditions shall not affect the validity or enforceability of any other provisions hereof.

14. Counterparts. This instrument may be executed in two or more counterparts, and when all counterparts have been executed, each counterpart shall be considered an original but when assembled shall constitute one and the same instrument, and shall have the same force and effect as though all of the signatories had executed a single signature page. Any unexecuted duplicate pages may be omitted from the assembled original document.

TOGETHER WITH the reversions, remainders, rents, issues and profits thereof, together with all buildings, improvements, tenements, rights, easements, privileges, and appurtenances to the same belonging or appertaining or held and enjoyed therewith, and all of the estate, right, title and interest of Grantors both at law and in equity therein and thereto.

TO HAVE AND TO HOLD the same unto Grantee, its successors and assigns, forever.

AND Grantors, for themselves and their successors in trust and assigns, do hereby covenant and agree with Grantee, its successors and assigns, that Grantors have done or suffered no act or thing whereby the Property hereby granted is encumbered, except as aforesaid and set forth hereinafter; that the Property is free and clear of liens and encumbrances made or suffered by Grantors except for the encumbrances contained herein and as set forth in Exhibit A, and real property taxes not yet due and payable; and that Grantors will and their successors in trust and assigns shall WARRANT AND DEFEND the same unto Grantee, its successors and assigns, forever, against the loss or claims and demands of all persons claiming by, through or under Grantors except as aforesaid.

The terms "Grantors" and "Grantee" wherever herein used shall be held to mean and include Grantors, their successors in trust and assigns, and Grantee, its successors and assigns, and this instrument shall be binding upon and shall inure to the benefit of the parties hereto and their said respective successors, successors in trust and assigns.

Any liability which may arise as a consequence of the execution of this instrument by or on behalf of the Trustees under the Will and of the Estate of James Campbell, Deceased, shall be a liability of the Estate of James Campbell and not the personal liability of any trustee or employee of the Estate of James Campbell.

[remainder of page left intentionally blank]

IN WITNESS WHEREOF, the parties have executed these presents on as of this
 ____ day of _____, 20__

Grantee:

**EDMUND C. OLSON, as Trustee of the
 EDMUND C. OLSON TRUST NO. 2 under
 agreement dated August 21, 1985**

Grantors:

**TRUSTEES UNDER THE WILL AND OF
 THE ESTATE OF JAMES CAMPBELL,
 DECEASED, acting in their fiduciary and not
 in their individual capacities**



 D. A. Heenan



 Richard W. Gashman



 C. R. Churchill

IN WITNESS WHEREOF, the parties have executed these presents on as of this
____ day of _____, 20__.

Grantee:



EDMUND C. OLSON, as Trustee of the
EDMUND C. OLSON TRUST NO. 2 under
agreement dated August 21, 1985

Grantors:

TRUSTEES UNDER THE WILL AND OF
THE ESTATE OF JAMES CAMPBELL,
DECEASED, acting in their fiduciary and not
in their individual capacities

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

SS.

On this 20th day of DECEMBER, 2005, before me personally appeared C. R. Churchill, D. A. Heenan, Richard W. Gushman, II, and ~~Ronald J. Zlatoper~~ CD. n.p. Trustees Under the Will and of The Estate of James Campbell, Deceased, to me known to be the persons described in and who severally executed the foregoing instrument, and severally acknowledged that they executed the same as their free act and deed as such Trustees.

C. L. Quesinberry

Printed Name: C.L. Quesinberry
Notary Public, State of Hawaii
My commission expires: July 12, 2007

STATE OF CALIFORNIA

)

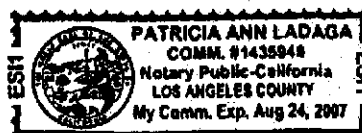
) ss.

)

COUNTY OF

On DECEMBER 20, 2005, before me,
PATRICIA ANN LADAGA, a Notary Public for the State of California,
 personally appeared EDMUND C. OLSON, as Trustee of the EDMUND C. OLSON TRUST NO.
 2 under agreement dated August 21, 1985, personally known to me [or proved to me on the
 basis of satisfactory evidence] to be the person whose name is subscribed to the within
 instrument and acknowledged to me that he executed the same in his authorized capacity, and
 that by his signature on the instrument the person, or the entity upon behalf of which the person
 acted, executed the instrument.

WITNESS my hand and official seal.



Signature of Notary

NOTARY STAMP

***** OPTIONAL SECTION *****

CAPACITY SIGNED BY SIGNER:

Though statute does not require the Notary to fill in the data below, doing so may prove
 invaluable to persons relying on the document.

☐ INDIVIDUAL(S)☐ CORPORATE OFFICER(S)☐ PARTNER(S)☐ TRUSTEE(S)☐ GUARDIAN/CONSERVATOR

☐ ^{title(s)} ATTORNEY-IN-FACT
☐ SUBSCRIBING WITNESS
☐ OTHER:

SIGNER IS REPRESENTING (NAME OF PERSON(S) OR ENTITY(IES)):

***** OPTIONAL SECTION *****

THIS CERTIFICATE MUST BE
 ATTACHED TO THE DOCUMENT
 DESCRIBED AT RIGHT:

TITLE OR TYPE OF DOCUMENT:

NUMBER OF PAGES:

Though the data requested
 here is not required by law, it
 could prevent fraudulent
 reattachment of this form.

DATE OF DOCUMENT:

SIGNER(S) OTHER THAN NAMED
 ABOVE:

**EXHIBIT A
TO TRUSTEES' LIMITED WARRANTY DEED**

PROPERTY DESCRIPTION

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Land Patent Grant Number S-15,666 to The Trustees under the Will and of the Estate of James Campbell, deceased) situate, lying and being at Puna, Island and County of Hawaii, State of Hawaii, being PARCEL C, same being portions of the Government Land of Kamaili, Kahena and Kikala (C.S.F No. 20,317 dated December 13, 1985), and thus bounded and described as per survey dated December 13, 1985, to wit:

Beginning at the east corner of this parcel of land, on the south boundary of Royal Patent 4475, Land Patent 8199, Land Commission Award 7713, Apana 13 to V. Kamamalu and at the north corner of Grant 7365 to J. K. Pau, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALIUI" being 115.60 feet south and 9,325.70 feet west, thence running by azimuths measured clockwise from true South:

- | | | | | |
|-----|--|-----|----------|---|
| 1. | 46° | 00' | 982.00 | feet along Grant 7365 to J. K. Pau; |
| 2. | 85° | 00' | 652.00 | feet along Grant 7365 to J. K. Pau; |
| 3. | 58° | 45' | 1,050.00 | feet along Grant 7365 to J. K. Pau; |
| 4. | 73° | 30' | 1,005.00 | feet along Grant 7547 to Wm. K. Keliioomaluu; |
| 5. | 45° | 46' | 1,197.50 | feet along Grant 7547 to Wm. K. Keliioomaluu; |
| 6. | 139° | 03' | 50.08 | feet along the north side of 50-Foot Road; |
| 7. | 45° | 46' | 1,064.16 | feet along the west side of 50-Foot Road; |
| 8. | 16° | 10' | 2,051.31 | feet along the west side of 50-Foot Road; |
| 9. | 38° | 34' | 1,319.67 | feet along the west side of 50-Foot Road; |
| 10. | 323° | 16' | 2,381.65 | feet along the south side of 50-Foot Road; |
| 11. | 270° | 00' | 981.59 | feet along the south side of 50-Foot Road; |
| 12. | 316° | 30' | 1,493.59 | feet along the south side of 50-Foot Road to the northwest side of Upper Puna Road; |
| 13. | Thence along the northwest side of Upper Puna Road, the direct azimuth and distance being: | | | |
| | 27° | 43' | 20" | 4,458.54 feet; |

14.	55°	41'	15"	171.71	feet along the northwest side of Upper Puna Road;
15.					Thence along the northwest side of Upper Puna Road on a curve to the right with a radius of 150.00 feet, the chord azimuth and distance being:
	79°	01'	15"	118.82	feet;
16.	102°	21'	15"	518.59	feet along the northwest side of Upper Puna Road;
17.					Thence along the northwest side of Upper Puna Road on a curve to the left with a radius of 250.00 feet, the chord azimuth and distance being:
	77°	01'	15"	213.94	feet;
18.	51°	41'	15"	284.74	feet along the northwest side of Upper Puna Road;
19.					Thence along the northwest side of Upper Puna Road on a curve to the right with a radius of 475.00 feet, the chord azimuth and distance being:
	55°	01'	15"	55.24	feet;
20.	58°	21'	15"	354.39	feet along the northwest side of Upper Puna Road;
21.					Thence along the northwest side of Upper Puna Road on a curve to the left with a radius of 450.00 feet, the chord azimuth and distance being:
	50°	46'	15"	118.77	feet;
22.	135°	50'		1,250.91	feet along Grant 7731 to L. K. Swain;
23.	157°	30'		3,467.50	feet along Grant 7593 to Louisa Swain, Grant 7478 to L. E. Blaisdell and the northwest end of 50-Foot Road;
24.	127°	35'		2,173.00	feet along Lot III-B of Upper Kaimu Homesteads;
25.	172°	29'		6,915.35	feet along Parcel B of Government Lands;
26.	258°	17'		139.94	feet along the south side of 20-Foot Road;
27.	244°	12'		614.60	feet along the south side of 20-Foot Road;

28.	195°	08'	397.80	feet along the south side of 20-Foot Road;
29.	254°	12'	783.69	feet along the south side of 20-Foot Road;
30.	254°	05'	1,202.89	feet along the south side of 20-Foot Road;
31.	254°	48'	283.02	feet along the south side of 20-Foot Road;
32.	242°	35'	876.64	feet along the south side of 20-Foot Road;
33.	245°	28'	581.05	feet along the south side of 20-Foot Road;
34.	242°	17'	539.85	feet along the south side of 20-Foot Road;
35.	246°	20'	20.81	feet along the south side of 20-Foot Road;
36.	240°	31'	1,658.87	feet along the south side of 20-Foot Road;
37.	240°	47'	707.62	feet along the south side of 20-Foot Road;
38.	309°	05'	1,550.70	feet along R. P. 4475, R. P. 6883, L. P. 8200, L. C. Aw. 7713, Ap. 14 to V. Kamamalu;
39.	296°	22'	753.00	feet along R. P. 4475, R. P. 6883, L. P. 8200, L. C. Aw. 7713, Ap. 14 to V. Kamamalu;
40.	286°	00'	2,750.00	feet along R. P. 4475, L. P. 8199, L. C. Aw. 7713, Ap. 13 Kamamalu to the point of beginning and containing an area of 1,930 acres, more or less.

SUBJECT, HOWEVER, to the following:

1. Any trails or rights-of-way, claims to which may be predicated upon prescriptive use or ancient Hawaiian use or custom.
2. Terms, provisions covenants, conditions and reservations contained in Land Patent Grant Number S-15,666, including, but not limited to, matters relating to reservation of minerals, water and prehistoric and historic remains.
3. Final Judgment; Exhibits "A" and "B" dated August 26, 2002, filed in the Circuit Court of the Third Circuit, State of Hawaii, 89-089, on August 26, 2002, and recorded in the Bureau of Conveyances of the State of Hawaii on September 16, 2002 as Document No. 2002-163259, against the Estate of James Campbell, Deceased; W.H. McVay and P.R. Cassiday, in their fiduciary capacity as Trustees under the Will and the Estate of James Campbell, in favor of Pele Defense Fund.
4. Memorandum of License dated December 13, 2005, recorded in said Bureau as Document No. 2005-256550, made by C.R. Churchill, D.A. Heenan, Richard W. Gushman, II and Ronald J. Zlatoper, the duly appointed, qualified and acting Trustees under the Will and of the Estate of James Campbell, Deceased, acting in their fiduciary and not in their

individual capacities, as Licensor, and State of Hawaii, Department of Land and Natural Resources, as Licensee.

5. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.

6. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

7. Water rights, claims or titles to water, whether or not shown by the public records.

Tax Map Key: Hawaii 1-2-10-1

End of Exhibit A

**EXHIBIT B
TO TRUSTEES' LIMITED WARRANTY DEED**

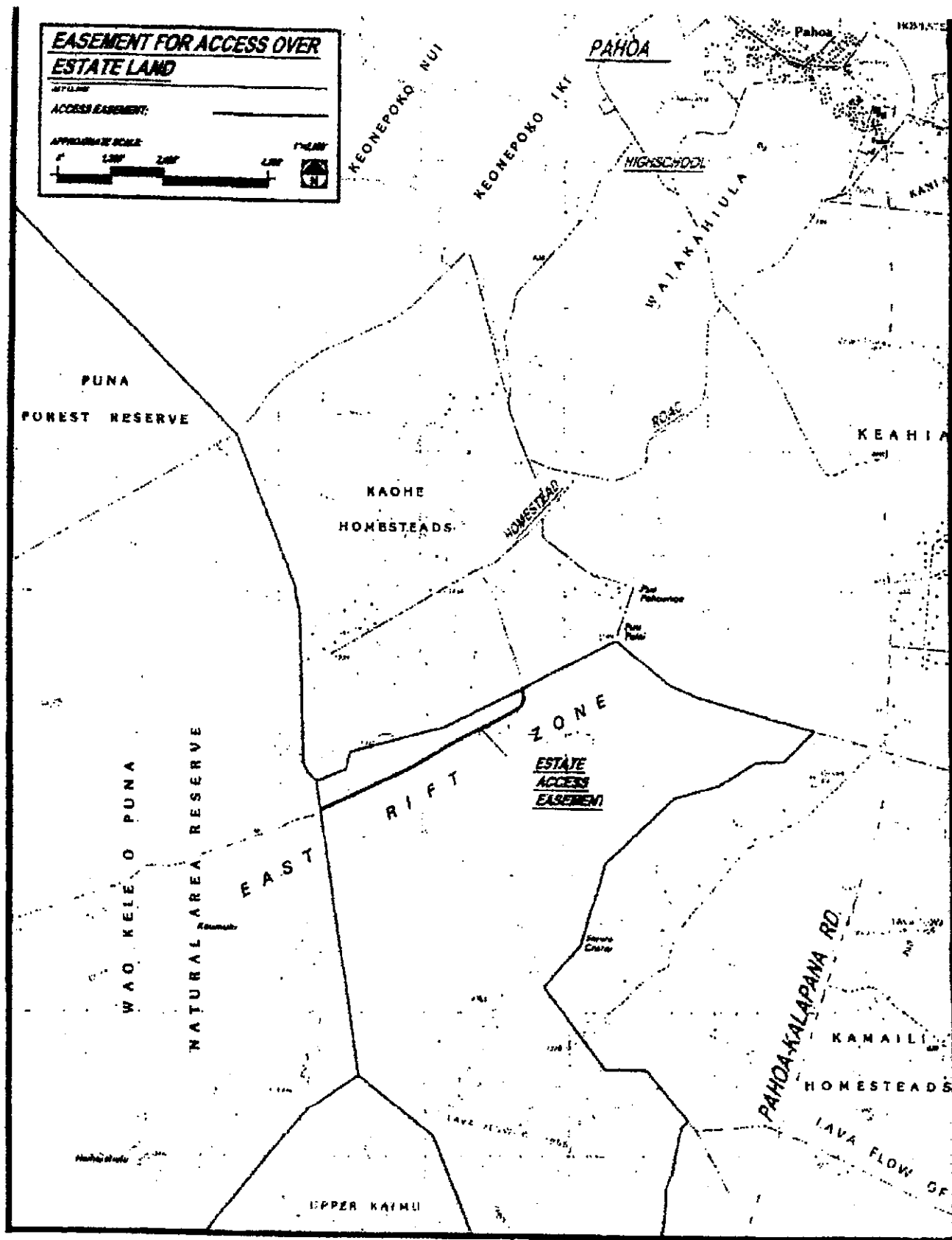


EXHIBIT C
TO TRUSTEES' LIMITED WARRANTY DEED

LAND COURT

REGULAR SYSTEM

Return By Mail ☒ Pick-Up ☐ To:

CARLSMITH BALL LLP
ASB Tower, Suite 2200
1001 Bishop Street
Honolulu, Hawaii 96813
Attention: Eric A. James
Telephone: 808.523.2500

TITLE OF DOCUMENT:

GRANT OF EASEMENT FOR ACCESS RIGHTS

PARTIES TO DOCUMENT:

INITIAL GRANTOR: C.R. CHURCHILL, D.A. HEENAN, RICHARD W. GUSHMAN, II and RONALD J. ZLATOPER, the duly appointed, qualified and acting TRUSTEES UNDER THE WILL AND OF THE ESTATE OF JAMES CAMPBELL, DECEASED, acting in their fiduciary and not in their individual capacities

GRANTEE: THE TRUST FOR PUBLIC LAND a California nonprofit public benefit corporation
The Trust For Public Land National Office
116 New Montgomery Street
4th Floor, San Francisco, California 94105

TAX MAP KEY(S): Hawaii 1-2-10-2
Hawaii 1-2-10-3

(This document consists of ____ pages.)

GRANT OF EASEMENT FOR ACCESS RIGHTS

THIS GRANT OF EASEMENT FOR ACCESS RIGHTS ("Grant of Easement") is made this _____ day of _____, 2006, by and between C.R. CHURCHILL, D.A. HEENAN, RICHARD W. GUSHMAN, II and RONALD J. ZLATOPER, the duly appointed, qualified and acting TRUSTEES UNDER THE WILL AND OF THE ESTATE OF JAMES CAMPBELL, DECEASED, acting in their fiduciary and not in their individual capacities, whose principal place of business and post office address is James Campbell Building, 1001 Kamokila Boulevard, Kapolei, Hawaii 96707 ("Initial Grantor"), and THE TRUST FOR PUBLIC LAND, a California nonprofit public benefit corporation, whose principal place of business and post office address is The Trust For Public Land National Office, 116 New Montgomery St., 4th Floor, San Francisco, California 94105 ("Grantee");

W I T N E S S E T H:

WHEREAS, Initial Grantor has conveyed its interest in the property more particularly described on Exhibit C attached hereto and incorporated by this reference (the "Property") to Edmund C. Olson, as Trustee of the Edmund C. Olson Trust No. 2 under agreement dated August 21, 1985 ("Fee Owner") by that certain Trustees' Limited Warranty Deed with Covenants dated _____ ("Deed"), recorded in the Bureau of Conveyances of the State of Hawaii ("Bureau") as Document No. _____;

WHEREAS, pursuant to paragraph 1 of the Deed ("Reserved Right"), the Initial Grantor reserved the right to grant an easement over the Property in the form set forth below to Initial Grantor's successor in title to the two parcels of real property adjacent to the Property and more particularly described in Exhibit B attached hereto and incorporated herein by reference ("Wao Kele O Puna Property");

WHEREAS, by deed of even date, Grantee is the successor in title to the Initial Grantor's interest in the Wao Kele O Puna Property and Initial Grantor desires to grant this Grant of Easement to Grantee pursuant to the Reserved Right;

NOW, THEREFORE, Initial Grantor, for and in consideration of the sum of ONE AND NO/100 DOLLAR (\$1.00) paid to Initial Grantor by Grantee, receipt whereof is hereby acknowledged, and of the covenants hereinafter contained and on the part of Grantee, its successors and assigns to be observed and performed, do hereby grant unto Grantee, its successors and assigns, perpetual, nonexclusive easement rights as set forth below over, across, and through the road shown on the map attached hereto as Exhibit A and incorporated by this reference (the "Easement Area"), which crosses the Property.

Grantee acknowledges that upon the recording of this Grant of Easement at the Bureau, the Fee Owner, as the successor in title to the Initial Grantor's interest in the Property, shall be deemed and construed for all purposes of this Grant of Easement as the "Grantor", and the Initial Grantor shall have no further liability hereunder;

TO HAVE AND TO HOLD the same unto Grantee, its successors and permitted assigns, for access to the Wao Kele O Puna Property, subject to earlier termination pursuant to the terms and conditions contained herein.

SUBJECT, HOWEVER, to any and all existing uses, licenses, easements and other encumbrances, recorded or unrecorded; and

RESERVING, HOWEVER, unto Grantor, for the benefit of Grantor, its lessees, tenants, licensees and other occupants, all rights of Grantor with respect to the Easement Area, including but not limited to the rights specifically reserved to Grantor herein, other than as specifically conferred upon Grantee herein.

In consideration of the rights hereby granted and the acceptance thereof and the obligations hereby assumed, the parties mutually covenant and agree as follows:

1. **Permitted Use of Easement Area.** Grantee, its employees, representatives, consultants, contractors, invitees, tenants, licensees, agents, successors and assigns, shall use the Easement Area solely for access purposes to the extent necessary for ingress and egress of vehicular and pedestrian traffic to and from the Wao Kele O Puna Property, and for no other purpose. Grantee shall not have any rights to park cars on the Easement Area without the prior written consent of Grantor. If the land through which the Easement Area crosses is encumbered by a declaration of covenants, Grantee's use of the Easement Area shall at all times conform to all covenants and conditions contained in such declaration of covenants. Grantee shall not commit or cause to be committed any waste in or upon the Easement Area or maintain any public or private nuisance or any other action which may interfere with or disturb the quiet enjoyment of any surrounding property, nor shall Grantee permit the Easement Area to be used for any improper, offensive or unlawful purpose.

2. **Maintenance.** Grantor has no obligation to maintain the Easement Area. Grantee shall at all times exercise every reasonable precaution against damaging the property adjoining the Easement Area and shall immediately repair any such damaged property.

3. **Observance of Laws and Other Requirements.** Grantee shall at all times during the term of this Grant of Easement: (a) observe, perform and comply with all Applicable Laws now or hereafter made with respect to the Easement Area or use thereof; (b) maintain in effect all permits, approvals, licenses, consents or other entitlements required by Applicable Laws for Grantee's permitted use of the Easement Area hereunder; and (c) keep the Easement Area free from hazards and nuisances caused by Grantee's use of the Easement Area. Any failure by Grantee to comply with the requirements set forth in clauses (a) through (c) of the immediately preceding sentence shall be an event of default under this Grant of Easement. Grantee shall indemnify (defined in paragraph 7 (Indemnity)) Grantor against all actions, suits, claims and damages by whomsoever brought or made by reason of the nonobservance or nonperformance of the requirements of: (i) all Applicable Laws, (ii) permits, approvals, licenses, consents or other entitlements for Grantee's use of the Easement Area, and (iii) this paragraph 3 (Observance of Laws and Other Requirements). As used herein the term "Applicable Laws," means all federal, state and local laws, statutes, ordinances, codes, rules, regulations, standards, directives, interpretations and conditions of approval, and all legislative, administrative or judicial orders, decrees, requirements, rulings or judgments, which now or in the future may be applicable to the land through which the Easement Area crosses, or to the use of the same.

4. **Condition of Easement Area.** Grantee confirms to Grantor that Grantee has made such investigation of facts concerning the physical condition of the Easement Area as Grantee has deemed appropriate. Grantee accepts the Easement Area in "as is" condition and

acknowledges that Grantor have made no representations concerning the condition of the Easement Area or the suitability or fitness of the Easement Area for any particular use or purpose. Grantee also acknowledges that the improvements, if any, within the Easement Area are or may be nonconforming under Applicable Laws. Grantee assumes all risks arising from any nonconforming improvements within the Easement Area.

5. Construction of Improvements. No improvements may be constructed on or adjacent to the Easement Area without the prior written consent of Grantor, which consent may be withheld in Grantor's sole discretion. Any approval by Grantor of such plans and specifications shall not be construed as an acknowledgment or representation by Grantor of the architectural, structural or legal sufficiency of the plans and specifications or of any improvements built in accordance therewith or of any other matter related to the plans and specifications or any improvements built in accordance therewith. Grantee shall be responsible for ascertaining the location of any other facilities within or adjacent to the Easement Area prior to undertaking any construction within the Easement Area, and Grantee shall be solely responsible for any and all damage caused to other facilities or resulting from damage to such other facilities which may be within or adjacent to the Easement Area. Upon completion of any construction within the Easement Area, Grantee shall provide Grantor, at Grantee's sole expense, with a complete set of plans and specifications for the entirety of such construction certified by Grantee's engineer or other duly licensed consultant (i) as showing the completed construction "as built", and (ii) as being in substantial compliance with the approved plans and specifications.

6. Limitation of Liability. Grantor shall not be liable or responsible for any loss or damage sustained by the Grantee or anyone claiming through or under Grantee because of the acts or omissions of Grantee or any lessee, tenant, licensee, invitee or other occupant of Grantor's lands through which the Easement Area crosses, or because of any act or omission of any adjacent landowner(s), its/their lessees, tenants, licensees or other occupants.

7. Indemnity. Grantee shall Indemnify Grantor, to the extent permitted by law, from and against any and all actions, suits, losses, costs, damages, liabilities or claims thereof, including reasonable attorneys' fees, arising out of or in connection with any loss or damage to property and/or injury to or death of persons arising out of or resulting from the acts or omissions of Grantee or anyone claiming by, through or under Grantee in connection with the exercise of the rights or privileges granted hereunder, or arising out of or in connection with any improvements that Grantee constructs within the Easement Area. Grantee's obligations to Indemnify Grantor under this paragraph 7 (Indemnity), under paragraph 3 (Observance of Laws and Other Requirements) and under paragraph 9 (Liens) shall survive the termination of this Grant of Easement and shall be binding upon Grantee, its successors and permitted assigns. As used herein, the term "Indemnify" means the protection of a party, by a money payment if necessary, against out-of-pocket loss. The term shall include an obligation by the indemnitor to defend and hold the indemnitee harmless (with counsel acceptable to the indemnitee) in connection with any claim against which the Indemnity operates. The obligation to Indemnify shall specifically include, but shall not be limited to payment of all reasonable costs and expenses paid by the indemnitee or reasonably anticipated to be incurred by the indemnitee for the indemnitee's defense, including without limitation, reasonable attorneys' fees and costs, and all other consultants' reasonable fees and costs. An Indemnity shall also specifically include all reasonable costs for research regarding settlement or other preventive measures undertaken by the indemnitee with regard to any such claim. The foregoing obligation to Indemnify shall not

apply to any action, suit, loss, cost, damages, liabilities or claim which is caused by the acts or omission of Grantor or its affiliates or their employees, tenants, licensees, agents contractors or representatives if a Court issues a final non-appealable order or judgment that the primary cause of any related damage was Grantor's gross negligence or willful misconduct.

8. Insurance. At Grantee's own expense, Grantee shall maintain a policy or policies of general liability insurance covering the Easement Area and all of Grantee's operations conducted therefrom, in an amount of at least ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) for each occurrence, with deductibles of no more than TWENTY FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00) for each occurrence, and naming Grantor as an additional insured. From time to time, but no less frequently than once per year, Grantee shall provide Grantor with evidence reasonably satisfactory to Grantor that Grantee has the insurance coverage required by this paragraph 8 (Insurance), and that Grantor are an additional insured thereunder.

9. Liens. Grantee shall not commit or suffer any act or neglect whereby the Easement Area becomes subject to any attachment, judgment, lien, charge or encumbrance whatsoever, and shall Indemnify Grantor from and against any and all loss, liability, claim or demand for damage or injury with respect thereto.

10. Abandonment, Termination or Relocation. In the event (i) Grantee enters into a written agreement with Grantor abandoning its use of the Easement Area, (ii) the Easement Area is realigned or relocated in accordance with paragraph 17 (Grantor's Reservations), or (iii) the Easement Area is dedicated to and accepted by any governmental authority, this Grant of Easement shall automatically terminate, and Grantee shall, at Grantor's request, at any time after said abandonment, termination, relocation or dedication, execute such documents as Grantor reasonably requests for the purpose of terminating this Grant of Easement. Grantee hereby agrees that on or before the termination or cancellation of this Grant of Easement, or within a reasonable period following such termination or cancellation, Grantee will remove its own improvements to the Easement Area and will restore the Easement Area to the condition existing at the time of entry thereon, reasonable wear and tear from normal usage or damage by unavoidable casualty excepted.

11. Condemnation. If any rights to use the Easement Area are taken or condemned in whole or part, or if the Easement Area is taken or condemned in whole or part, by any authority having the power of eminent domain, all compensation and damages awarded on account of the condemnation or taking shall be payable to Grantor, their lessees, tenants, licensees or other occupants, if any, as their interests appear, without any apportionment to Grantee.

12. Default and Remedies. If either party fails to perform any of the terms, covenants and agreements contained herein, if such failure continues for a period of ten (10) days after written notice, then the non-defaulting party shall be entitled to all remedies available to it at law or equity, including by way of example and not in limitation thereof, the right to sue such person for specific performance, injunctive relief and/or monetary damages, including without limitation, reasonable attorneys' fees, costs and expenses. Notwithstanding the foregoing, the parties agree that this grant may not be terminated except as provided in paragraph 10 above.

13. Cure by Grantor. Whenever under any provision of this Grant of Easement, Grantee is obligated to make payment or expenditure or to do any act or thing, or to incur any liability whatsoever, and Grantee, after demand for performance has been made to Grantee by Grantor, fails, refuses or neglects to perform as herein required, Grantor shall be entitled but shall not be obligated to make any such payment or expenditure, or to do any such act or thing, or to incur any such liability, all on behalf of and at the cost and for the benefit of Grantee, and in such event the amount thereof shall be due to and at the option of and upon demand by Grantor, together with interest on any such amounts unpaid, at a rate equal to twelve percent (12%) per annum (but in no event more than the maximum per annum rate of interest permitted to be charged by then Applicable Laws), and Grantee shall reimburse Grantor for any and all loss, damage or expense, including reasonable attorneys' fees, which Grantor may suffer or be put to by reason thereof. Nothing contained herein shall prevent Grantor, at the cost of and for the benefit of Grantee, from satisfying any judgment, liability or lien, as the case may be, in the event Grantee fails or refuses to satisfy the same as herein provided.

14. Expenses of Enforcement. If Grantor or Grantee brings any legal proceeding to enforce any of the terms, covenants or conditions hereof, the unsuccessful party in such proceeding shall pay the prevailing party's costs and expenses, including reasonable attorneys' fees, incurred in the bringing or defending of such proceeding.

15. Remedies Cumulative. The remedies set forth herein shall be in addition to remedies otherwise applicable or provided herein or otherwise available at law or in equity, it being understood that all rights and remedies shall always be non-exclusive and cumulative and that the exercise of one remedy or form of relief available hereunder shall not be exclusive of, or constitute a waiver of, any other.

16. No Waiver. The failure in any case to enforce the provisions of any covenant, condition, restriction, obligation or charge of this Grant of Easement shall not constitute a waiver of any right to enforce any such provision of this Grant of Easement in any other case.

17. Grantor's Reservations. Any other provision herein notwithstanding, and in addition to any other reservations set forth herein, this Grant of Easement is subject to the reservation of Grantor of the following rights, to which Grantee hereby consents: (i) the right from time to time to realign or relocate the Easement Area, at Grantee's own cost (including, without limitation, all costs to realign or relocate Grantee's improvements, if any, within the Easement Area), as development or use of the surrounding lands may require, provided that upon completion of such realignment or relocation, the Grantor shall enter into a grant of easement with Grantee for such realigned or relocated Easement Area, which new grant of easement shall be in substantially the same form as this Grant of Easement; (ii) the right to subdivide all or any portion of the land through which the Easement Area crosses into lots or to consolidate all or any portion of such land with adjoining land and to resubdivide the same into lots at Grantor's expense; (iii) the right to utilize or to permit others to utilize the Easement Area, provided that such use does not unreasonably interfere with Grantee's use of the same; and (iv) the right to make one or more irrevocable, nonexclusive grants or assignments of nonexclusive rights in the Easement Area from time to time to any person, including without limitation, governmental authorities, public or private utilities, or others.

18. Grantee's Waiver of Additional Access Rights. Grantee expressly waives any claim to access over other lands owned by Grantor whether by implication, necessity or otherwise.

19. Partial Invalidity. If any term, provision, covenant or condition of this Grant of Easement or the application thereof to any person or circumstances shall to any extent, be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Grant of Easement, or the application of such term, provision, covenant or condition of this Grant of Easement to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term or provision of this Grant of Easement shall be valid and enforceable to the fullest extent permitted by law.

20. Binding Effect. All the terms, covenants and conditions of this Grant of Easement shall run with the land and shall inure to the benefit of and be binding upon the successors, successors in trust and assigns of Grantor and the heirs, devisees, personal representatives, successors and assigns of Grantee to the same extent as said terms, covenants and conditions inure to the benefit of and are binding upon Grantor and Grantee, respectively.

21. Grammar. The necessary grammatical changes required to make the provision of this Grant of Easement apply in the plural sense where there is more than one grantee and to either corporations, associations, partnerships, or individuals, males or females, shall in all instances be assumed as though in each case fully expressed.

22. Governing Law. The laws of the State of Hawaii shall govern the validity, performance and enforcement of this Grant of Easement.

23. Amendment. This Grant of Easement may only be amended in writing, executed by both Grantor and Grantee.

24. Estate's Liability. Any liability which may arise as a consequence of the execution of this instrument by or on behalf of the Trustees under the Will and of the Estate of James Campbell, Deceased, shall be a liability of the Estate of James Campbell, Deceased, and not the personal liability of any trustee or employee of the Estate of James Campbell.

[This space left blank intentionally; signatures on following page]

IN WITNESS WHEREOF, the undersigned have executed this instrument the day and year first above written.

Grantee:

THE TRUST FOR PUBLIC LAND, a
California nonprofit public benefit corporation

Initial Grantor:

**TRUSTEES UNDER THE WILL AND OF
THE ESTATE OF JAMES CAMPBELL,
DECEASED, acting in their fiduciary and not
in their individual capacities**

By _____
Name:
Its:

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

SS:

On this _____ day of _____, before me personally appeared D.A. HEENAN, C.R. CHURCHILL, RICHARD W. GUSHMAN, II and RONALD J. ZLATOPER, the duly appointed, qualified and acting TRUSTEES UNDER THE WILL AND OF THE ESTATE OF JAMES CAMPBELL, DECEASED, acting in their fiduciary and not in their individual capacities, to me known to be the persons described in and who severally executed the foregoing instrument, and severally acknowledged that they executed the same as their free act and deed as such Trustees.

Name: _____
Notary Public, State of Hawaii

My commission expires: _____

STATE OF CALIFORNIA

)

COUNTY OF

) ss.

)

On _____, 20____, before me,
 _____, a Notary Public for the State of California,
 personally appeared _____, personally known to
 me [or proved to me on the basis of satisfactory evidence] to be the person(s) whose name(s)
 is/are subscribed to the within instrument and acknowledged to me that he/she/they executed
 the same in his/her/their authorized capacity(ies), and that by his/her/their signature on the
 instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the
 instrument.

WITNESS my hand and official seal.

Signature of Notary

NOTARY STAMP

***** OPTIONAL SECTION *****

CAPACITY SIGNED BY SIGNER:

Though statute does not require the Notary to fill in the data below, doing so may prove
 invaluable to persons relying on the document.

☐ INDIVIDUAL(S)

CORPORATE OFFICER(S)

☐ PARTNER(S)☐ ATTORNEY-IN-FACT ^{title(s)}☐ TRUSTEE(S)☐ SUBSCRIBING WITNESS☐ GUARDIAN/CONSERVATOR ☐ OTHER:

SIGNER IS REPRESENTING (NAME OF PERSON(S) OR ENTITY(IES)):

***** OPTIONAL SECTION *****

THIS CERTIFICATE MUST BE
 ATTACHED TO THE DOCUMENT
 DESCRIBED AT RIGHT:

TITLE OR TYPE OF DOCUMENT:

NUMBER OF PAGES:

Though the data requested here
 is not required by law, it could
 prevent fraudulent reattachment
 of this form.

DATE OF DOCUMENT:

SIGNER(S) OTHER THAN NAMED
 ABOVE:

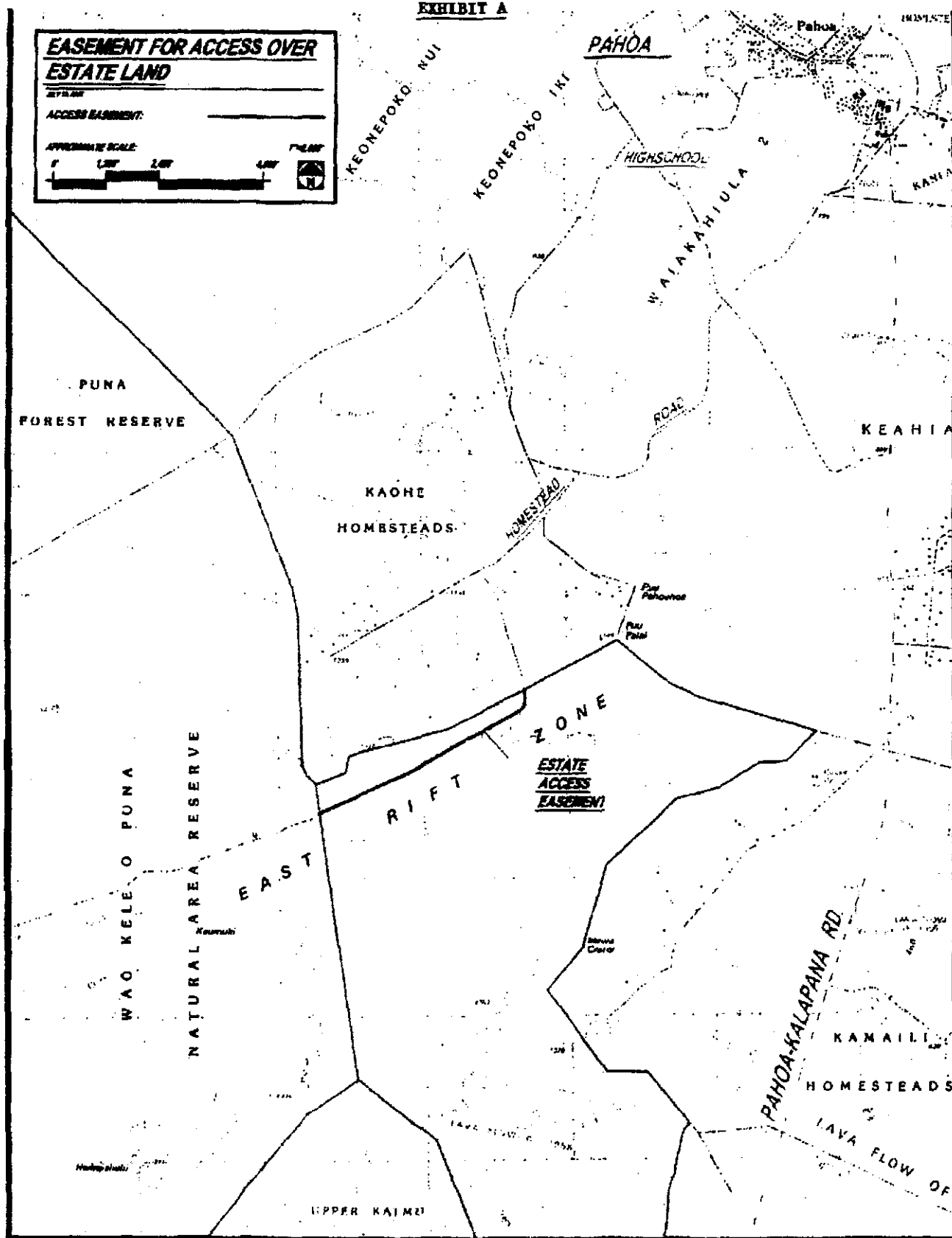
EXHIBIT A

EASEMENT FOR ACCESS OVER ESTATE LAND

BYLINE

ACCESS EASEMENT:

APPROXIMATE SCALE:



**EXHIBIT B
TO GRANT OF EASEMENT FOR ACCESS RIGHTS**

WAO KELE O PUNA PROPERTY DESCRIPTION

-PARCEL ONE:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Land Patent Grant Number S-15,666 to The Trustees under the Will and of the Estate of James Campbell, deceased) situate, lying and being at Puna, Island and County of Hawaii, State of Hawaii, being PARCEL A, same being portions of the Government Land of Makuu, Kaohe, Kaimu, Kehena, Kapaahu and Kamaili (C.S.F No. 20,315 dated December 13, 1985), and thus bounded and described as per survey of Raymond S. Nakamura, Land Surveyor, with the Survey Division, Department:

Beginning at the west corner of this parcel of land and on the south boundary of Land Court Application 1053, the coordinates of said point beginning referred to Government Survey Triangulation Station "OLAA" being 47,769.67 feet South and 8,228.41 feet West, thence running by azimuths measured clockwise from true South:

- | | | | | |
|-----|------|-----|-----|--|
| 1. | 240° | 05' | 12" | 24,288.19 feet along Land Court Application 1053; |
| 2. | 345° | 23' | 30" | 1,348.57 feet along the remainder of Government Lands; |
| 3. | 313° | 00' | | 1,221.60 feet along the remainder of Government Lands; |
| 4. | 330° | 16' | | 4,682.10 feet along the remainder of Government Lands; |
| 5. | 262° | 03' | | 1,960.70 feet along the remainder of Government Lands; |
| 6. | 290° | 02' | | 627.40 feet along the remainder of Government Lands; |
| 7. | 314° | 28' | | 4,581.80 feet along the remainder of Government Lands; |
| 8. | 314° | 47' | | 744.40 feet along the remainder of Government Lands; |
| 9. | 314° | 12' | | 735.30 feet along the remainder of Government Lands; |
| 10. | 315° | 31' | | 1,825.53 feet along the remainder of Government Lands; |
| 11. | 40° | 41' | | 13.81 feet along the north side of 20-Foot Road; |
| 12. | 338° | 15' | | 14.99 feet along the west side of 20-Foot Road; |
| 13. | 60° | 05' | 12" | 25,840.22 feet along Parcel B of Government Lands; |
| 14. | 140° | 23' | | 16,220.18 feet along Parcel B of Government Lands to the point of beginning and containing an area of 9,012 acres, more or less. |

-PARCEL TWO:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Land Patent Grant Number S-15,666 to The Trustees under the Will and of the Estate of James Campbell, deceased) situate, lying and being at Puna, Island and County of Hawaii, State of Hawaii, being PARCEL B, same being portions of Government Land of Makuu, Kaohe, Kaimu, Kehena, Kapaahu and Kamaili (C.S.F. No. 20,316 dated December 13, 1985), and thus bounded and described as per survey of Raymond S. Nakamura, Land Surveyor, with the Survey Division, Department:

Beginning at the west corner of this parcel of land and at an angle on the south boundary of Land Court Application 1053, the coordinates of said point of beginning referred to Government Survey Triangulation Station "OLAA" being 55,748.70 feet South and 22,096.90 feet West, thence running by azimuths measured clockwise from true South:

1. 240° 05' 12" 16,000.00 feet along Land Court Application 1053;
2. 320° 23' 16,220.18 feet along Parcel A of Government Lands;
3. 240° 05' 12" 25,840.22 feet along Parcel A of Government Lands;
4. 338° 15' 3,262.76 feet along the west side of the 20-Foot Road;
5. 340° 23' 19.26 feet along the west side of the 20-Foot Road;
6. 342° 31' 250.51 feet along the west side of the 20-Foot Road;
7. 337° 27' 156.17 feet along the west side of the 20-Foot Road;
8. 347° 14' 271.04 feet along the west side of the 20-Foot Road;
9. 348° 38' 331.85 feet along the west side of the 20-Foot Road;
10. 353° 51' 125.10 feet along the west side of the 20-Foot Road;
11. 359° 30' 1,278.10 feet along the west side of the 20-Foot Road;
12. 358° 59' 2,128.77 feet along the west side of the 20-Foot Road;
13. 332° 38' 221.69 feet along the west side of the 20-Foot Road;
14. 315° 33' 287.92 feet along the west side of the 20-Foot Road;
15. 258° 17' 9.45 feet along the south side of the 20-Foot Road;
16. 352° 29' 6,915.35 feet along Parcel C of Government Lands;

- | | | | | |
|-----|------|---------|-----------|--|
| 17. | 56° | 27' | 1,460.60 | feet along Lots 3-B and 3-A of Upper Kaimu Homesteads; |
| 18. | 39° | 38' | 3,534.10 | feet along Lot 3-A of Upper Kaimu Homesteads, Grant 6571 to K. Kamakani, Grant 6330 to S. Kamelamela and Grant 6328 to D. Kamelamela; |
| 19. | 53° | 04' | 10,520.90 | feet along Government Lands; |
| 20. | 53° | 31' 30" | 9,863.30 | feet along Grant 9275 to H. M. Holt, et al., Trustees under the Will and of the Estate of James Campbell, Deceased; |
| 21. | 148° | 00' | 4,100.00 | feet along R.P. 8030, L.C.Aw. 8559-B, Ap. 14 to William C. Lunailo; |
| 22. | 116° | 00' | 8,150.00 | feet along R.P. 8030, L.C.Aw. 8559-B, Ap. 14 to William C. Lunailo; |
| 23. | 126° | 59' | 25,105.30 | feet along R.P. 8030, L.C.Aw. 8559-B, Ap. 14 to William C. Lunailo to the point of beginning and containing an area of 16,843.891 acres, more or less. |

SUBJECT, HOWEVER, as to PARCELS ONE and TWO above, to the following:

1. Terms, provisions covenants, conditions and reservations contained in Land Patent Grant Number S-15,666, including, but not limited to, matters relating to reservation of minerals, water and prehistoric and historic remains.

2. Final Judgment; Exhibits "A" and "B" dated August 26, 2002, filed in the Circuit Court of the Third Circuit, State of Hawaii, 89-089, on August 28, 2002, and recorded in the Bureau of Conveyances of the State of Hawaii on September 16, 2002 as Document No. 2002-163259, against the Estate of James Campbell, Deceased; W.H. McVay and P.R. Cassidy, in their fiduciary capacity as Trustees under the Will and the Estate of James Campbell, in favor of Pele Defense Fund.

Tax Map Keys: Hawaii 1-2-10-2 (PARCEL ONE)
Hawaii 1-2-10-3 (PARCEL TWO)

End of Exhibit B

**EXHIBIT C
TO GRANT OF EASEMENT FOR ACCESS RIGHTS**

PROPERTY DESCRIPTION

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Land Patent Grant Number S-15,666 to The Trustees under the Will and of the Estate of James Campbell, deceased) situate, lying and being at Puna, Island and County of Hawaii, State of Hawaii, being PARCEL C, same being portions of the Government Land of Kama'ili, Kahena and Kikala (C.S.F No. 20,317 dated December 13, 1985), and thus bounded and described as per survey dated December 13, 1985, to wit:

Beginning at the east corner of this parcel of land, on the south boundary of Royal Patent 4475, Land Patent 8199, Land Commission Award 7713, Apana 13 to V. Kamamalu and at the north corner of Grant 7365 to J. K. Pau, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALI'U" being 115.60 feet south and 9,325.70 feet west, thence running by azimuths measured clockwise from true South:

- | | | | | |
|-----|------|-----|----------|--|
| 1. | 46° | 00' | 982.00 | feet along Grant 7365 to J. K. Pau; |
| 2. | 85° | 00' | 652.00 | feet along Grant 7365 to J. K. Pau; |
| 3. | 58° | 45' | 1,050.00 | feet along Grant 7365 to J. K. Pau; |
| 4. | 73° | 30' | 1,005.00 | feet along Grant 7547 to Wm. K. Keliihoomalu; |
| 5. | 45° | 46' | 1,197.50 | feet along Grant 7547 to Wm. K. Keliihoomalu; |
| 6. | 139° | 03' | 50.08 | feet along the north side of 50-Foot Road; |
| 7. | 45° | 46' | 1,084.16 | feet along the west side of 50-Foot Road; |
| 8. | 16° | 10' | 2,051.31 | feet along the west side of 50-Foot Road; |
| 9. | 38° | 34' | 1,319.67 | feet along the west side of 50-Foot Road; |
| 10. | 323° | 16' | 2,381.65 | feet along the south side of 50-Foot Road; |
| 11. | 270° | 00' | 981.59 | feet along the south side of 50-Foot Road; |
| 12. | 316° | 30' | 1,493.59 | feet along the south side of 50-Foot Road to the northwest side of Upper Puna Road; |
| 13. | | | | Thence along the northwest side of Upper Puna Road, the direct azimuth and distance being: |
| | 27° | 43' | 20" | 4,458.54 feet; |

- | | | | | | |
|-----|------|-----|-----|----------|--|
| 14. | 55° | 41' | 15" | 171.71 | feet along the northwest side of Upper Puna Road; |
| 15. | | | | | Thence along the northwest side of Upper Puna Road on a curve to the right with a radius of 150.00 feet, the chord azimuth and distance being: |
| | 79° | 01' | 15" | 118.81 | feet; |
| 16. | 102° | 21' | 15" | 518.59 | feet along the northwest side of Upper Puna Road; |
| 17. | | | | | Thence along the northwest side of Upper Puna Road on a curve to the left with a radius of 250.00 feet, the chord azimuth and distance being: |
| | 77° | 01' | 15" | 213.94 | feet; |
| 18. | 51° | 41' | 15" | 284.74 | feet along the northwest side of Upper Puna Road; |
| 19. | | | | | Thence along the northwest side of Upper Puna Road on a curve to the right with a radius of 475.00 feet, the chord azimuth and distance being: |
| | 55° | 01' | 15" | 55.24 | feet; |
| 20. | 58° | 21' | 15" | 354.39 | feet along the northwest side of Upper Puna Road; |
| 21. | | | | | Thence along the northwest side of Upper Puna Road on a curve to the left with a radius of 450.00 feet, the chord azimuth and distance being: |
| | 50° | 46' | 15" | 118.77 | feet; |
| 22. | 135° | 50' | | 1,250.91 | feet along Grant 7731 to L. K. Swain; |
| 23. | 157° | 30' | | 3,467.50 | feet along Grant 7593 to Louisa Swain, Grant 7478 to L. E. Blaisdell and the northwest end of 50-Foot Road; |
| 24. | 127° | 35' | | 2,173.00 | feet along Lot III-B of Upper Kaimu Homesteads; |
| 25. | 172° | 29' | | 6,915.35 | feet along Parcel B of Government Lands; |

26.	258°	17'	139.94	feet along the south side of 20-Foot Road;
27.	244°	12'	614.60	feet along the south side of 20-Foot Road;
28.	195°	08'	397.80	feet along the south side of 20-Foot Road;
29.	254°	12'	783.69	feet along the south side of 20-Foot Road;
30.	254°	05'	1,202.89	feet along the south side of 20-Foot Road;
31.	254°	48'	283.02	feet along the south side of 20-Foot Road;
32.	242°	35'	876.64	feet along the south side of 20-Foot Road;
33.	245°	28'	581.05	feet along the south side of 20-Foot Road;
34.	242°	17'	539.85	feet along the south side of 20-Foot Road;
35.	246°	20'	20.81	feet along the south side of 20-Foot Road;
36.	240°	31'	1,658.87	feet along the south side of 20-Foot Road;
37.	240°	47'	707.62	feet along the south side of 20-Foot Road;
38.	309°	05'	1,550.70	feet along R. P. 4475, R. P. 6883, L. P. 8200, L. C. Aw. 7713, Ap. 14 to V. Kamamalu;
39.	296°	22'	753.00	feet along R. P. 4475, R. P. 6883, L. P. 8200, L. C. Aw. 7713, Ap. 14 to V. Kamamalu;
40.	286°	00'	2,750.00	feet along R. P. 4475, L. P. 8199, L. C. Aw. 7713, Ap. 13 Kamamalu to the point of beginning and containing an area of 1,930 acres, more or less.

Tax Map Key: Hawaii 1-2-10-1

End of Exhibit C



Alyson K
Yim/DLNR/StateHiUS

01/03/2008 03:29 PM

To "A. Lono Lyman" <lymana001@hawaii.rr.com>

cc Carty.S.Chang@hawaii.gov, Eric.A.Tanaka@hawaii.gov,
Eric.T.Hirano@hawaii.gov, Gayle.M.Ito@hawaii.gov,
Marshall.I.Sakai@hawaii.gov, Nami.JH.Wong@hawaii.gov

bcc

Subject RE: SOH-1 and SOH-2

Mailing address:

Eric Hirano, Chief Engineer

DLNR Engineering Division

PO Box 373

Honolulu, HI 96809

E-mail:

eric.t.hirano@hawaii.gov

"A. Lono Lyman"
<lymana001@hawaii.rr.com>

To <Alyson.K.Yim@hawaii.gov>

cc <Carty.S.Chang@hawaii.gov>, <Gayle.M.Ito@hawaii.gov>, <Marshall.I.Sakai@hawaii.gov>,
<Nami.JH.Wong@hawaii.gov>, <Eric.T.Hirano@hawaii.gov>, <Eric.A.Tanaka@hawaii.gov>

01/03/2008 03:23 PM

Subj RE: SOH-1 and SOH-2
ect

Please send a snail and email mailing address.

From: Alyson.K.Yim@hawaii.gov [mailto:Alyson.K.Yim@hawaii.gov]

Sent: Thursday, January 03, 2008 3:14 PM

To: A. Lono Lyman

Cc: Carty.S.Chang@hawaii.gov; Gayle.M.Ito@hawaii.gov; Marshall.I.Sakai@hawaii.gov;
Nami.JH.Wong@hawaii.gov; Eric.T.Hirano@hawaii.gov; Eric.A.Tanaka@hawaii.gov

Subject: RE: SOH-1 and SOH-2

Mr. Lyman-

Excuse my jumping in, but Gayle has been out sick.

PGV can contact Eric Hirano, Chief Engineer of the Engineering Division, at 587-0230.

Thank you,

Alyson

"A. Lono Lyman"

To <Gayle.M.Ito@hawaii.gov>

<lymana001@hawaii.rr.com>

cc <Carty.S.Chang@hawaii.gov>, <Alyson.K.Yim@hawaii.gov>.

01/03/2008 03:02 PM

<Nami.J.Wong@hawaii.gov>, <Marshall.I.Sakai@hawaii.gov>

Subj RE: SOH-1 and SOH-2
ect

PGV has indicated that they may be interested in taking over the wells on land controlled by Kapoho Land Partnership "KLP" (a related company, Kapoho Land Development Co. Ltd. owns the encumbered feeless subsurface and mining rights which KLP owns).

Please provide the name of who should be contacted by PGV in order to pursue this.

Best wishes for the new year, A. Lono Lyman
Manager KLP and KLDC.

From: Gayle.M.Ito@hawaii.gov [mailto:Gayle.M.Ito@hawaii.gov]
Sent: Friday, December 21, 2007 11:38 AM
To: lymana001@hawaii.rr.com
Cc: Carty.S.Chang@hawaii.gov; Alyson.K.Yim@hawaii.gov; Nami.J.Wong@hawaii.gov; Marshall.I.Sakai@hawaii.gov
Subject: SOH-1 and SOH-2

Mr. Lyman,

Per our telephone discussion this morning, attached are maps showing the general locations of geothermal wells SOH-1 and SOH-2, both planned for capping and abandonment. Please let me know the outcome of your discussion with PGV. Also, should you have further questions, please feel free to contact me.

Happy Holidays!

Gayle Ito

Telephone: (808) 587-0273

E-mail: gayle.m.ito@hawaii.gov

* * * * *

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Gayle M Ito/DLNR/StateHiUS

12/21/2007 11:38 AM

To lymana001@hawaii.rr.com

cc Carty S Chang/DLNR/StateHiUS@StateHiUS, Alyson K
Yim/DLNR/StateHiUS@StateHiUS, Nami J
Wong/DLNR/StateHiUS@StateHiUS, Marshall I

bcc

Subject SOH-1 and SOH-2

Mr. Lyman,

Per our telephone discussion this morning, attached are maps showing the general locations of geothermal wells SOH-1 and SOH-2, both planned for capping and abandonment. Please let me know the outcome of your discussion with PGV. Also, should you have further questions, please feel free to contact me.



DOC002.PDF

Happy Holidays!

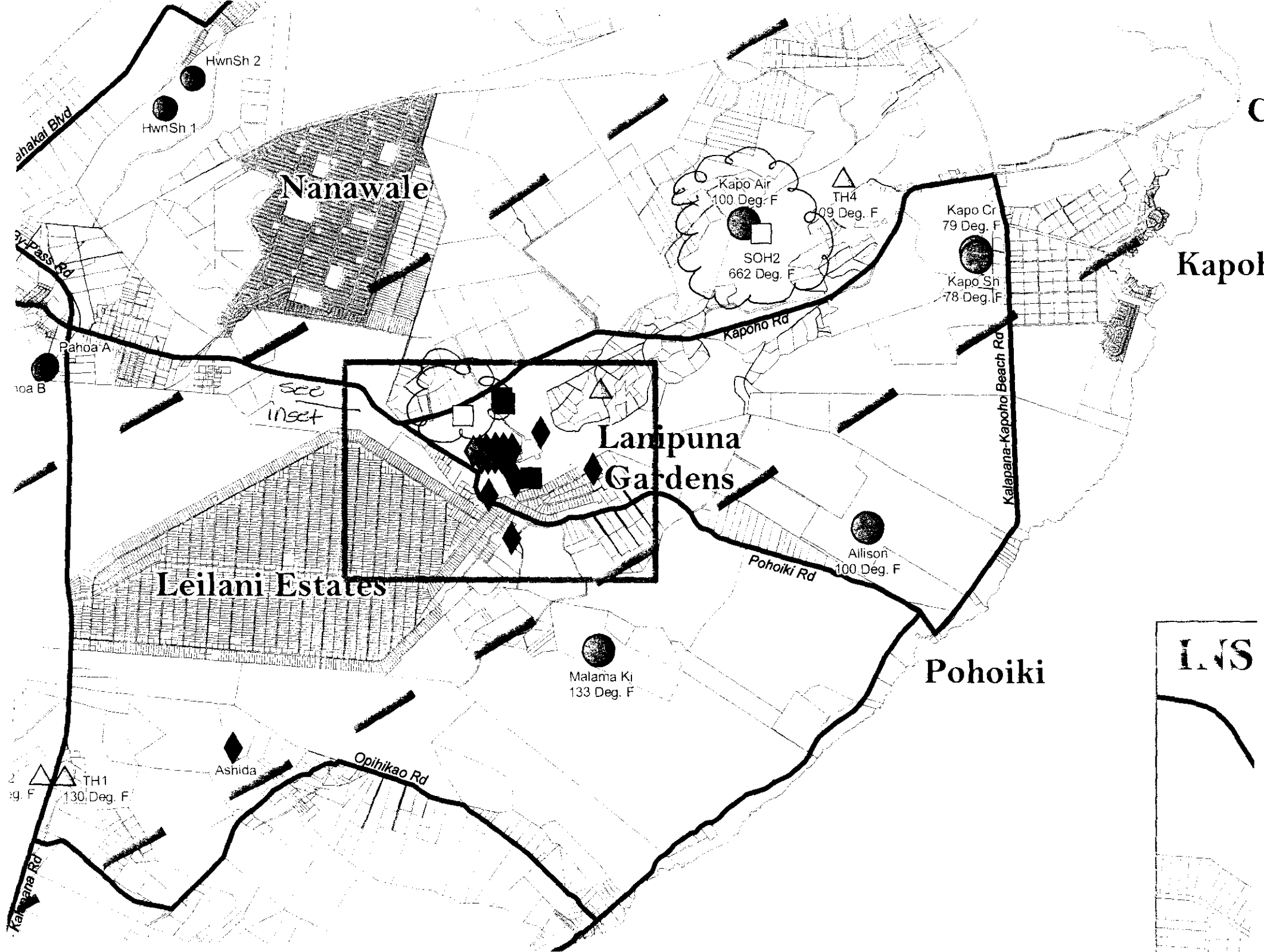
Gayle Ito

Telephone: (808) 587-0273

E-mail: gayle.m.ito@hawaii.gov

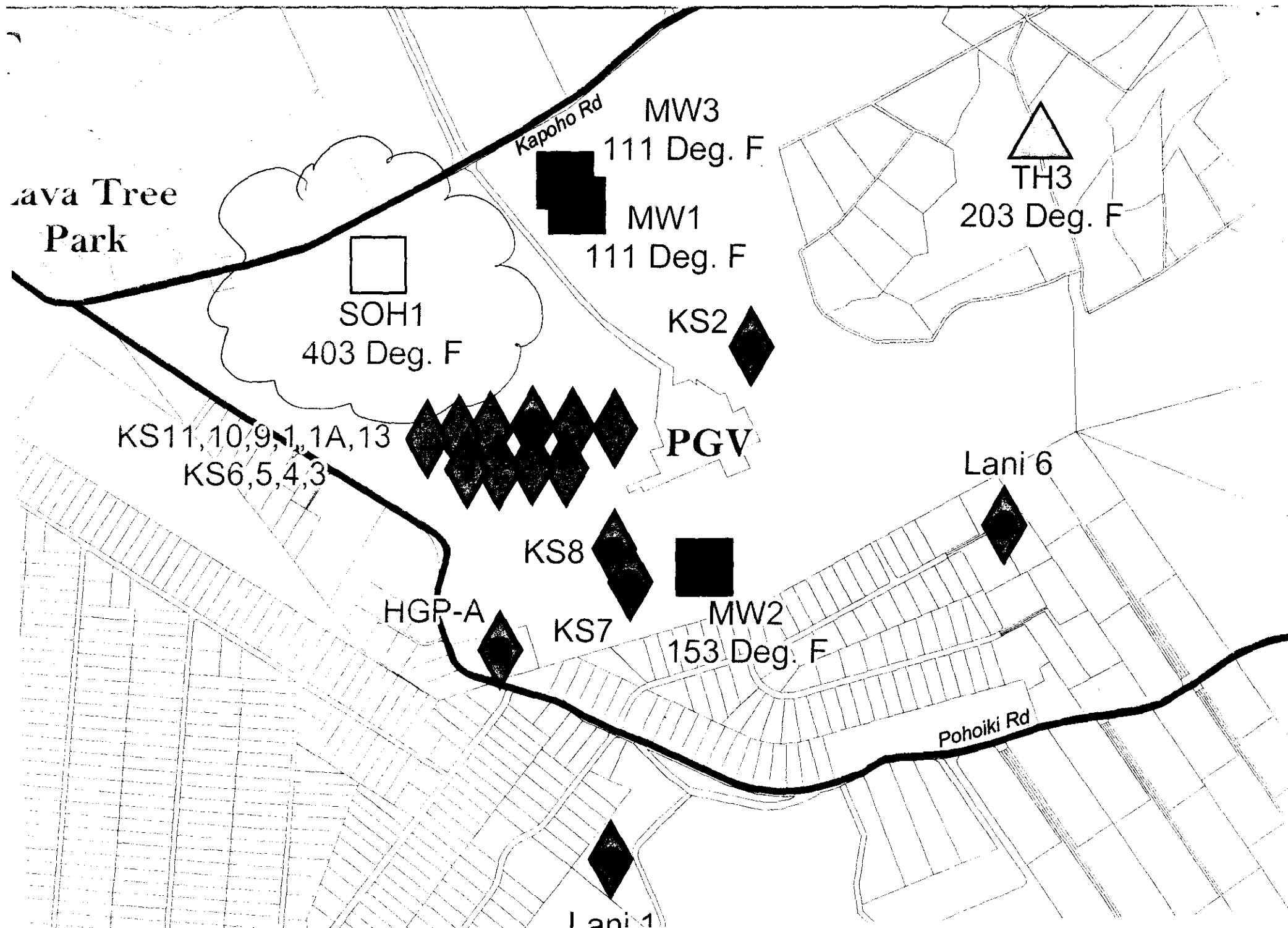
* * * * *

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Inset

Plugged Well



SOH-1 AND SOH-2
Ownership

PROPERTY IDENTIFICATION:

- SOH-1

TMK: 1-4-02:032

- SOH-2

TMK: 1-4-01:020

OWNERSHIP:

Based on deducted information; files found were inconclusive but alluded to the following ownership information:

Landowner: Kapoho Land & Development Company, Limited

Owner of Mining Rights: Kapoho Land Partnership

Lessee of Mineral Rights: Puna Geothermal Venture, Ltd.

Could not find any documentation granting RCUH any of the rights listed above.

*see
ROE below
tab*

QUESTIONS:

1. Was there any agreements between the above and RCUH granting any rights?
These documents will include the requirements in capping and abandoning in compliance with said agreements (e.g. contact, notification for change in status, etc.).
2. Why is DLNR rather than RCUH capping and abandoning the well?
3. Has RCUH abandoned the well sites?

Attachment to e-mail: Carty Chang
Nami Wong
Alyson Yim
Marshal Sakai

December 13, 2007

C:\Documents and Settings\citogam\My Documents\Gayle's
Folders\Projects\WaoKeleOPuna\SOH-1&2\Background.doc

**HAWAII COUNTY
REAL PROPERTY
TAX OFFICE**

5041

Click on the parcel id in the left column for details.

Search for Account: **14002032**

Results 1-2 of 2

Parcel ID	Owner	Situs Address
140020320000	KAPOHO LAND AND DEV ...	KAPOHO ROAD
140020320000	KAPOHO LAND PARTNERS...	KAPOHO ROAD

Last Updated: 12/7/2007

Printed on Thursday, December 13, 2007, at 4:36:18 PM

Powered by Akanda

POWERED BY AKANDA

HELP CONTACT US

**HAWAII COUNTY
REAL PROPERTY
TAX OFFICE**

County > State > State Bureau of Conveyances

[Home](#) [Property Search](#)[Address](#) [Parcel Number](#) [Advanced](#)

RECORD DETAILS

▶ Parcel Data

[Sales](#)
[Permits](#)
[Land](#)
[Residential](#)
[Commercial](#)
[Det. Structures](#)
[Sketch](#)
[Values](#)
[Map](#)
[Tax Bill](#)
[Tax Details 2007](#)
[Tax Details 2006](#)
[Tax Details 2005](#)
[Tax Details 2004](#)
[Tax Details 2003](#)**140020320000****KAPOHO ROAD****KAPOHO LAND AND DEV CO LT****Parcel Data**



Site Address KAPOHO ROAD
Unit No.
Property Class AGRICULTURAL
Zoning Call the Planning Department at (808) 961-8288.

Owner

Owner	Address	City	State	Country	Zip Code
KAPOHO LAND & DEV CO LTD					
KAPOHO LAND PARTNERSHIP	PO BOX 374	HILO	HI		96720

CURRENT RECORD

1 of 2

[Return To Search Results](#) [Print This](#) [Email This](#) [Generate Permit Report](#)

HAWAII COUNTY REAL PROPERTY TAX OFFICE

140020320000**KAPOHO ROAD****KAPOHO LAND AND DEV CO LT****Parcel Data**

Site Address KAPOHO ROAD
 Unit No.
 Property Class AGRICULTURAL
 Zoning Call the Planning Department at (808) 961-8288.

Owner

Owner	Address	City	State	Country	Zip Code
KAPOHO LAND & DEV CO LTD					
KAPOHO LAND PARTNERSHIP	PO BOX 374	HILO	HI		96720

Data Last Modified : 12/7/2007**DISCLAIMER**

This site was designed to provide quick and easy access to real property tax assessment records and maps for properties located in the County of Hawai'i and related general information about real property tax procedures. Listed information does not include all of the information about every property located in this County. Information and answers to the most commonly asked questions from members of the general public have been provided. The information on this site is subject to daily changes; time permitting, we normally refresh the data on this site on a weekly basis. All of the information listed on this site was prepared exclusively for tax assessment purposes. Users must understand that the property information and descriptions may change at any time. Persons using this data should NOT rely upon this information in formulating important decisions that affect their financial future nor should this information be considered as legal documentation. No warranties, expressed or implied, are provided for the data herein, its use or its interpretation. Utilization of the search facility indicates understanding and acceptance of this statement by the user. Thank you.

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HELP CONTACT US

HAWAII COUNTY
REAL PROPERTY
TAX OFFICE

County > State > State Bureau of Tax Services

[Home](#) [Property Search](#)[Address](#) [Parcel Number](#) [Advanced](#)**Parcel Number**
Search

14001002

Search


[Search Tips](#)Enter the Parcel Number WITHOUT the island number
or dashes.

Click on the parcel id in the left column for details.

Search for Account: **14001002**

Results 1-2 of 2

Parcel ID	Owner	Situs Address
140010020000	KAPOHO LAND AND DEVE...	14-3860 KAPOHO PAHOA...
140010020000	KAPOHO LAND PARTNERS ..	14-3860 KAPOHO PAHOA...

Results Page: **[1]** Print This Email This

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HELP - GENERAL INFO

**HAWAII COUNTY
REAL PROPERTY
TAX OFFICE**[County](#) > [State](#) > [State Bureau of Finance](#)[Home](#) [Property Search](#)[Address](#) [Parcel Number](#) [Advanced](#)[REFRESH DETAILS](#)**140010020000****14-3860 KAPOHO PAHOA ROAD****KAPOHO LAND AND DEVELOPMENT****Parcel Data**

Site Address 14-3860 KAPOHO PAHOA ROAD
Unit No.
Property Class AGRICULTURAL
Zoning Call the Planning Department at (808) 961-8288.

Owner

Owner	Address	City	State	Country	Zip Code
KAPOHO LAND & DEVELOPMENT CO LTD					
KAPOHO LAND PARTNERSHIP	P O BOX 374	HILO	HI		96720

1 of 2
[Return To Search Results](#)

[Print This](#) [Email This](#) [Generate Permit Report](#)

HAWAII COUNTY REAL PROPERTY TAX OFFICE

140010020000**14-3860 KAPOHO PAHOA ROAD****KAPOHO LAND AND DEVELOPME****Parcel Data**

Site Address 14-3860 KAPOHO PAHOA ROAD
 Unit No.
 Property Class AGRICULTURAL
 Zoning Call the Planning Department at (808) 961-8288.

Owner

Owner	Address	City	State	Country	Zip Code
KAPOHO LAND & DEVELOPMENT CO LTD					
KAPOHO LAND PARTNERSHIP	P O BOX 374	HILO	HI		96720

Data Last Modified : 12/7/2007**DISCLAIMER**

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KAPOHO, PUNA, HAWAII.

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 41 Clifford Y.S. Lee & M.
 Jane Ann Buxton-Lee - T/E

7 Graham International, Inc.
 49 Ralph E. Allison & M.
 Loma D. - T/E
 61 Maxine M. Carlsmith - T/E
 Curtis H. Carlsmith - T/E
 73 Graham International, Inc.
 74 Graham International, Inc.
 75 Graham International, Inc.
 51 Vacationland Land Trust

LAEPAOO - PUUA, PUNA, HAWAII

DEPARTMENT OF THE TAXATION MAPS	
TERRITORY OF HAWAII	
TAX MAP	
THIRD	SEC
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CONTAINING	
SCALE: 1 IN. = 1000'	

REVOCABLE RIGHT OF ENTRY

This Agreement made this 19 day of March, 1990
by and between KAPOHO LAND PARTNERSHIP, A LIMITED PARTNERSHIP
whose place of business and address is 26 Waianuenue Avenue,
Hilo, Hawaii 96720, and PUNA GEOTHERMAL VENTURE, whose place of
business and post office address is 101 Aupuni Street, Suite
1014B, Hilo, Hawaii, 96720, hereinafter severally and jointly
referred to as "Grantors", and THE UNIVERSITY OF HAWAII, FOR ITS
HAWAII NATURAL ENERGY INSTITUTE, whose place of business and post
office address is 2540 Dole Street, Holmes 246, Honolulu, Hawaii
96822, called "Grantee";

W I T N E S S E T H :

The Grantors in consideration of One Dollar (\$1.00) and
other valuable consideration, do hereby grant a revocable right
of entry to Grantee and Grantee does hereby accept said revocable
right of entry from Grantors to enter that certain real property
indicated on Exhibits "A", "B", "C", and "D" attached hereto and
made a part hereof, such area hereinafter called the "Premises,"
on the terms and conditions set forth below:

1. Specific Provisions.

(a) Grantee shall have the right to enter the
Premises, with road access as indicated on Exhibits "E" and "F"
attached hereto and made a part hereof, from February 1, 1990 to

December 1, 1995, subject to further extension upon such terms and conditions as may be mutually agreed to by Grantor and Grantee.

(b) Grantee's use of the Premises during the term hereof shall be only for the following purposes: Drilling and monitoring of two experimental geothermal wells (slimholes; SOH 1 and SOH 2).

(c) Grantee shall be permitted use of water well (3081-01, Airstrip well 9-6) and access for a water line from said well to the drill site for possible use during drilling of SOH 2. Grantee shall be responsible for obtaining all necessary permits (i.e. well modification permit, well pump installation permit, etc.) to use said water well. Grantee shall be responsible for well modification (if necessary), well pump installation, water line installation, and any other ancillary work. Grantee shall remove the well pump, water line, and ancillary material after SOH 2 drilling has been completed.

2. Construction. No drilling on the Premises shall commence until Grantee is furnished a one hundred percent (100%) labor and material payment bond naming Grantee and Grantors as co-obligees, which bond shall be in the amount of the contract price for the work and with surety or sureties licensed to do business in Hawaii, guaranteeing the completion of such work free and clear of mechanics' and materialman's liens (Exhibit "G").

3. Indemnification. As further consideration for this right of entry, Grantee will defend, indemnify and hold Grantors harmless from and against all claims and demands for loss or

damage, including property damage, personal injury and wrongful death, arising out of or in connection with the use or occupancy of the Premises by the Grantee or anyone claiming under Grantee; subject, however, to the laws of the State of Hawaii, including, but not limited to, Chapters 661 and 662, Hawaii Revised Statutes, and subject to legislative appropriation. The provisions of this paragraph shall not be construed as conferring a right or benefit upon any third party, nor shall they be deemed a waiver of any rights or defenses, including any rights or defenses under Chapters 661 or 662, Hawaii Revised Statutes, which Grantor or Grantee may be entitled to assert against a claim or demand of a third party.

4. Revocation. This right of entry may be revoked upon Grantee's breach of any of the terms or conditions contained herein or upon condemnation of the Premises.

5. Liens. Grantee will not commit or suffer any act or neglect, or permit anyone claiming under Grantee to commit or suffer any act or neglect, whereby the Premises, or Grantors' lands of which the premises are a part, or any improvements thereon shall at any time during the term become subject to any attachment, judgment, lien, charge or encumbrance and will defend, indemnify and hold Grantors harmless against all loss, costs and expenses with respect thereto, as provided in Paragraph 3 above. Grantee shall promptly pay all contractors and materialmen so as to minimize the possibility of a lien attaching to the Premises and if any such lien is made or filed, then Grantee shall bond against or discharge the same within ten (10)

days following a final adjudication of the validity of the claims for which the lien was filed.

6. Compliance with Laws. Grantee will at all times during the term observe and perform all laws, ordinances, rules and regulations, now or hereafter made by any governmental authority, applicable to the Premises or any improvements thereon or use thereof, and will defend, indemnify and hold Grantors harmless against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of said laws, ordinances, rules and regulations or of this covenant, as provided in Paragraph 3 above.

7. Condition of Premises. Grantee accepts the Premises in the condition they are in at the commencement of this right of entry and acknowledges that Grantors have made no representations concerning the condition of the Premises or their suitability for the use intended to be made thereof. Grantee will at all times act and cause anyone claiming under it to act in a manner conducive to the Premises at all times being in good order and a strictly sanitary condition and will repair any damage to the Premises or to surrounding premises caused by the Grantee or anyone claiming under Grantee.

8. Surface Operations.

(a) Prior to commencing operations on the Premises, Grantee will consult with Grantors and submit a plan concerning the proposed operations and showing the location of any drill sites and surface areas to be utilized and the locations and routes of any roads and pipelines.

(b) In any well drilled by Grantee hereunder sufficient casing shall be set and cemented so as to seal off surface and subsurface waters, any of which would be harmful to agricultural operations.

(c) Grantee is not allowed to flow test or produce from these two experimental (slimhole) wells.

(d) Grantee shall take such steps at Grantee's own expense as are reasonably necessary to insure that its operation areas will be kept as dust free as is reasonably practicable.

(e) Grantee agrees to fence all sump holes and excavations and all other improvements, works, or structures which might unreasonably interfere with or be detrimental to the activities of Grantors, and to build sumps and to take all reasonable measures to prevent pollution of surface or subsurface waters on or in the Premises. Upon abandonment of any well or facility on the Premises, or on the termination of this right of entry, then as to such Premises Grantee, insofar as it is reasonable to do so, shall level and fill all sump holes and excavations dug by Grantee, shall remove all debris left by Grantee as well as all buildings, improvements and facilities constructed by Grantee, and shall leave those areas of the Premises used by Grantee basically in the same condition as the same were in immediately prior to Grantee's use and shall pay Grantors and/or its tenants for all damage to buildings, structures or other property caused by Grantee in effecting such removal.

9. Work at Grantee's Expense. All costs of conducting work under this right of entry shall be at the expense of Grantee and at no expense to Grantors.

10. Insurance. Grantee shall require its contractors at their own expense to maintain during the term, a policy or policies of comprehensive general liability insurance, naming the Grantors as additional insured, in a responsible insurance company approved by Grantors, with minimum limits of \$1,000,000 for injury to one or more persons in any one occurrence, and \$200,000 for property damage in any one occurrence, and such policy or policies or certificate showing the above coverage shall be deposited with Grantors prior to any construction activities on the Premises and shall contain the following statement (Exhibit "C"):

"Thirty (30) days' written notice of cancellation or change will be given Kapoho Land Partnership, A Limited Partnership, 26 Waianuenue Avenue, Hilo, Hawaii, 96720, before any cancellation or change of this policy will be effective. The insurance includes coverage for the liability assumed by the insured as Grantee under the revocable right of entry agreement between the insured and Kapoho Land Partnership, A Limited Partnership dated _____, 1990.

11. Prior Rights. This right of entry is subject to the prior rights of Puna Geothermal Venture under that certain _____, 19__ Sublease from Kapoho Land Partnership, A Limited Partnership and the prior rights of any other lessees or tenants of Grantors.

12. Use of Premises Only. Grantee, and anyone claiming under Grantee, shall make every effort to limit its activities to the Premises subject to this right of entry and will exercise its rights in a manner causing as little interference as reasonably possible with the use of the Premises or the adjoining premises by Grantors, or anyone claiming under them.

13. Right to Remove Equipment. Any tools, drilling or other equipment or other personal property taken upon or placed upon the Premises by Grantee or anyone claiming under Grantee shall remain their property and shall be removed by them upon the expiration of this right of entry or its earlier termination.

14. Relationship of the Parties. Nothing contained herein shall be deemed by the parties or by any third party to constitute either party hereto a partner, agent or representative of the other party hereto or to create a fiduciary relationship between the parties.

15. Access to Information. Grantors and their agents shall be provided with full access to all information developed with respect to the drilling activities of Grantee to be conducted on the premises.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed as of the date hereinabove first written.

UNIVERSITY OF HAWAII, FOR ITS
HAWAII NATURAL ENERGY
INSTITUTE

By

Its

Director, Procurement &
Property Mgt Office

By

Its

("Grantee")

KAPOHO LAND PARTNERSHIP, A
LIMITED PARTNERSHIP

By

Its President

KAPOHO LAND MANAGEMENT
COMPANY, INC.

By

Its General Partner

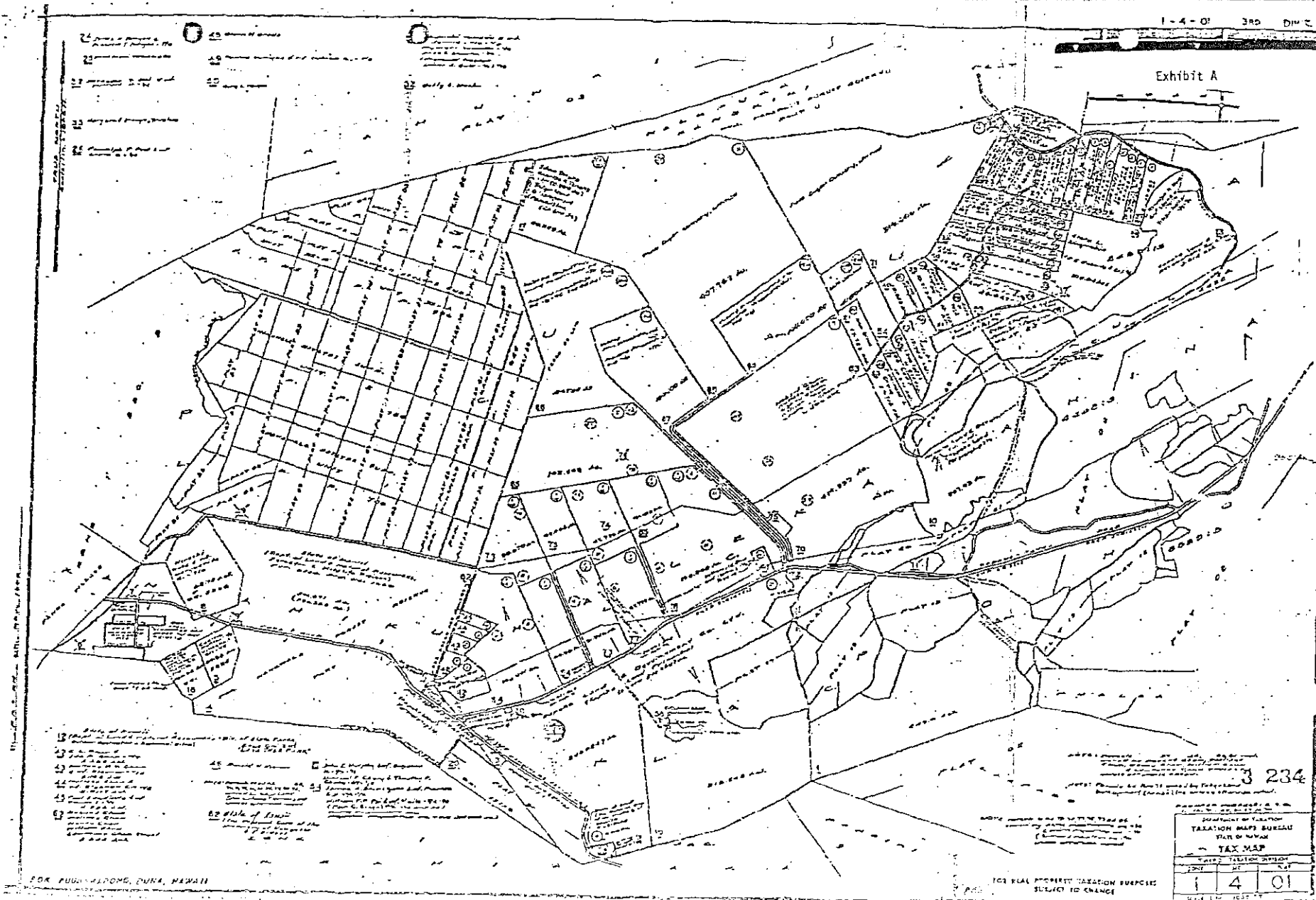
PUNA GEOTHERMAL VENTURE

By

Its

("Grantors")

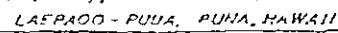
Exhibit A



FOR KULA PLATEAU, KULA, HAWAII

FOR REAL PROPERTY TAXATION PURPOSES
SUBJECT TO CHANGE

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TAX MAP		
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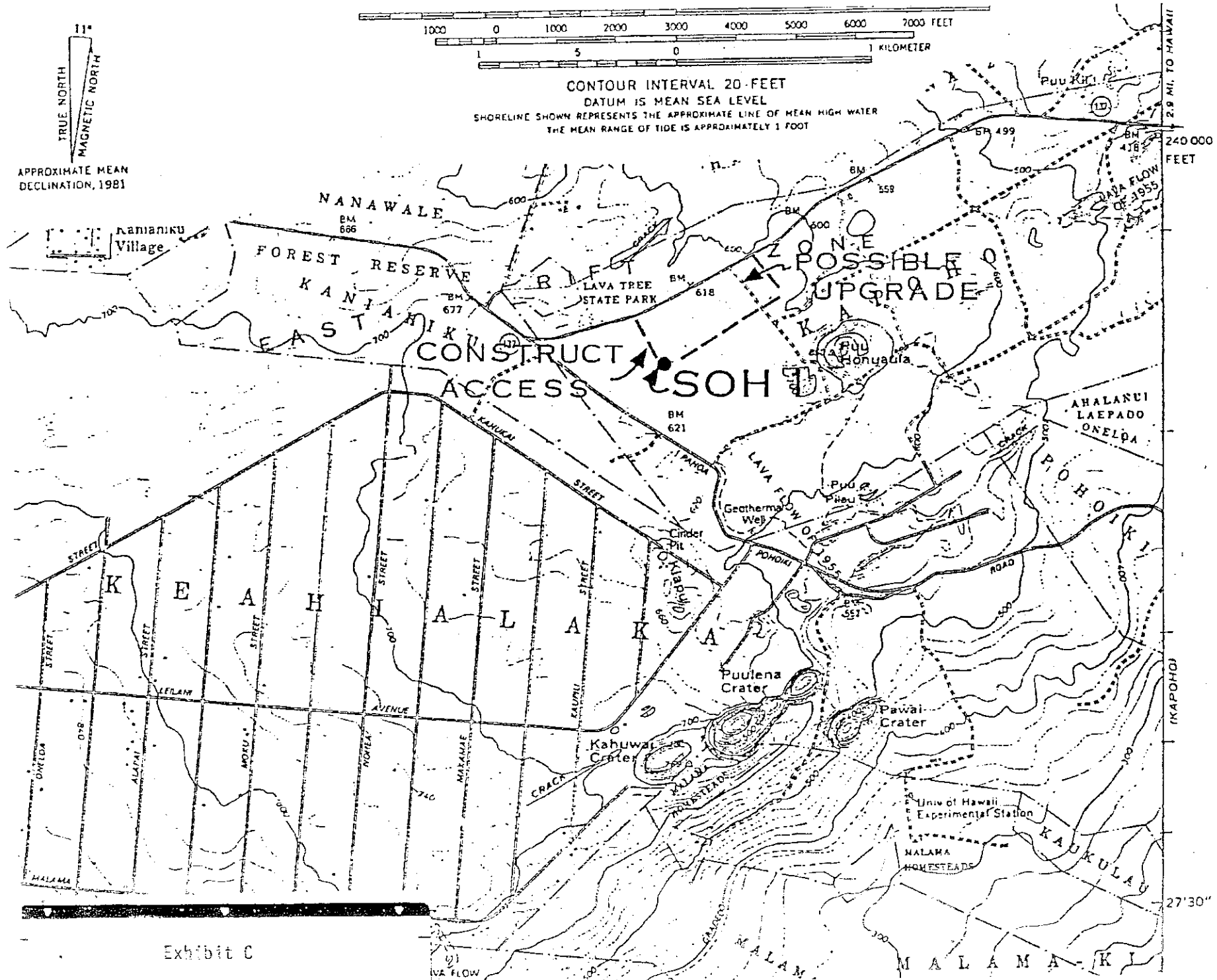
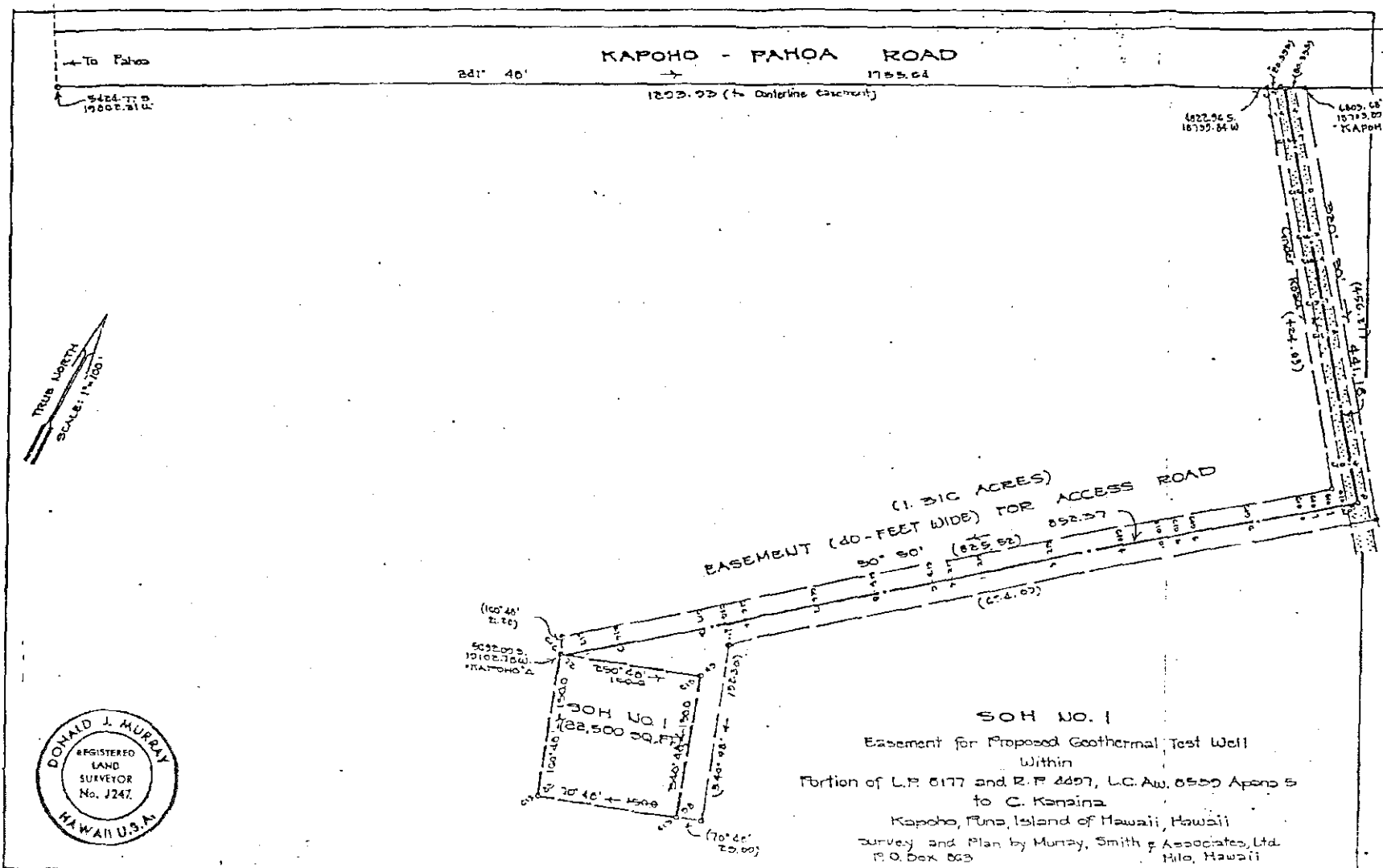
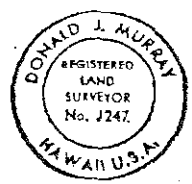


Exhibit C

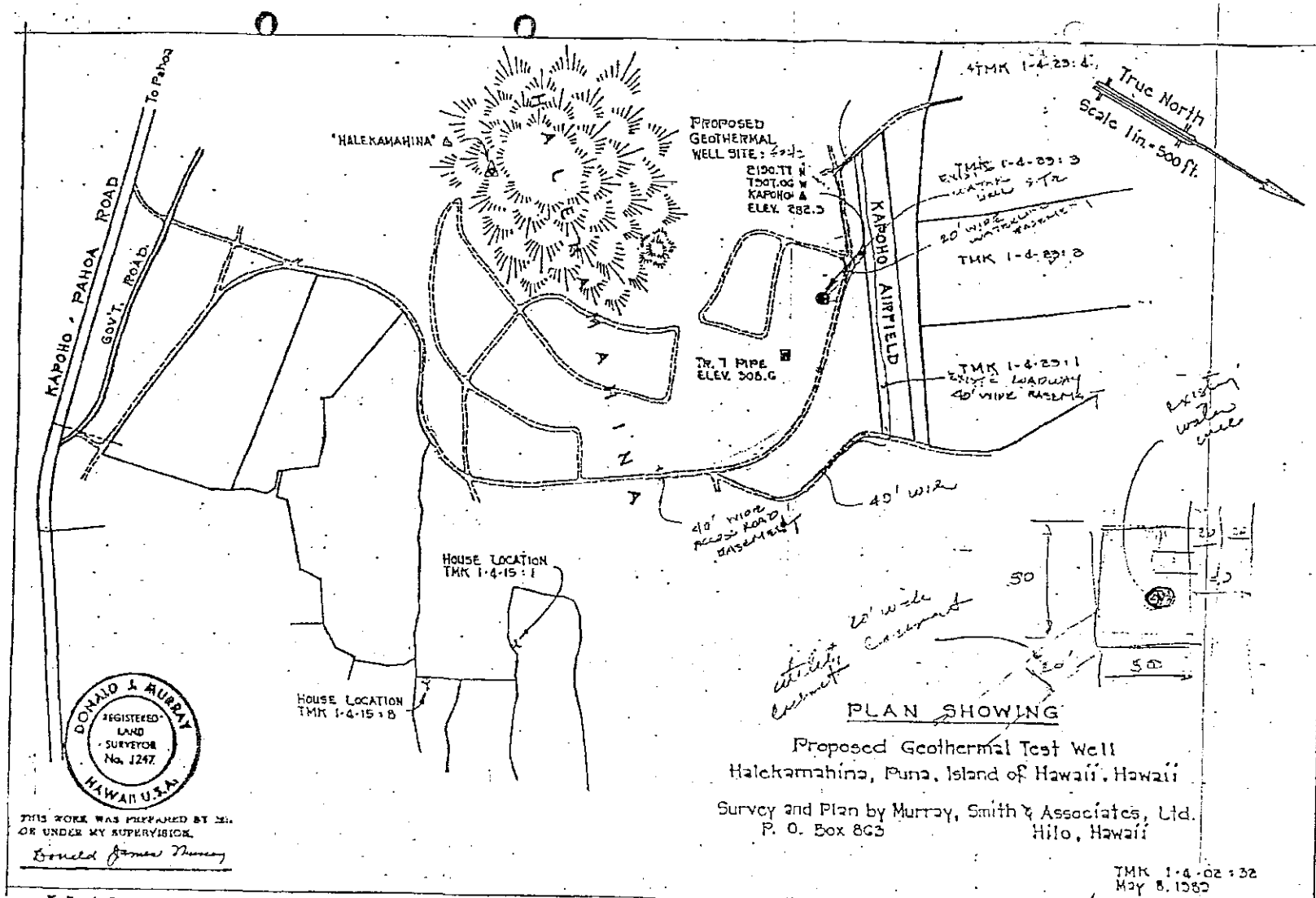


TRUE NORTH
SCALE: 1"=100'



15000 P.O. 405 & 409

EXHIBIT E



F. B. 405

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COPY
ORIGINAL FILED IN

Exhibit F

SUMMARY OF APPROVED ACTIONS BY:
OHA AND BLNR

<p>Acquisition of Land in Puna, Hawaii, known as Wao Kele O Puna (TMK: 1-2-10:03 and 03) for the following purposes:</p> <ol style="list-style-type: none"> 1. To maintain the natural and cultural resources; 2. To protect the exercise of traditional and customary rights by Native Hawaiians; and, 3. To ensure the parcels pass to the Nation. 	
<p>Conditions Approved by OHA (August 25, 2005):</p> <p>Authorizes the Administrator to enter into agreements to acquire and manage said lands:</p> <ol style="list-style-type: none"> 1. Negotiate and enter into an acquisition agreement utilizing \$250,000 of OHA funds and \$3,400,000 of federal Forest Legacy funds to complete purchase. 2. Negotiate and enter into agreement(s) with DLNR to secure management of said property as a forest reserve designated under Chapter 183, HRS, and to transfer up to \$228,000 to assist DLNR and other entities, including Pele Defense Fund, to manage said parcels. 3. Authorize Administrator to request continuing funding up to \$228,000, on an annual basis, contributing towards the cost of maintaining said property until OHA can assume management of said property. 4. Work with and negotiate and enter into agreements with TPL, DLNR, the County of Hawaii and other entities to plug and to abandon the geothermal well on said property, Well KA1-1. (Amount required subject to further approval by the Board of Trustees.) 5. Develop a process to ensure that said property pass to Native Hawaiian Governing Entity. 	<p>Conditions Approved by BLNR (September 9, 2005):</p> <p>Approves in concept the general terms of the MOA to assist OHA in purchase of said property and authorizes the following:</p> <ol style="list-style-type: none"> 1. The Chairperson to negotiate and sign the MOA, as amended by further negotiations with OHA and review and approval by the Attorney General. 2. The Chairperson to negotiate and sign agreements to terminate the Geothermal Mining Lease R-5 and bifurcate the Well Monitoring License Agreement with the Estate of James Campbell, subject to review and approval by the Attorney General. 3. The Department to hold public hearings to designate said property as a forest reserve and remove the Geothermal Resource Sub Zone designation on the site.

ORIGINAL

**MEMORANDUM OF AGREEMENT BETWEEN THE DEPARTMENT OF LAND
AND NATURAL RESOURCES, STATE OF HAWAI'I AND THE OFFICE OF
HAWAIIAN AFFAIRS**

I. INTRODUCTION

This Memorandum of Agreement ("Agreement") is entered into by and between the Department of Land and Natural Resources of the State of Hawai'i (the "Department"), by and through the Board of Land and Natural Resources (the "Board"), and the Office of Hawaiian Affairs ("OHA"). The term "DLNR" shall mean the Department, the Board, or both as the context requires. DLNR and OHA are collectively referred to as the Parties.

This Agreement is designed to promote increased understanding, cooperation, interaction, and to provide basic principles and guidelines for further negotiations on issues of mutual concern.

OHA has entered into an Agreement of Sale with The Trust for Public Lands ("TPL"), a California nonprofit public benefit corporation to purchase that certain real property known as Wao Kele O Puna, (Tax Map Keys: 1-2-10-2 and 1-2-10-3, respectively), consisting of approximately 25,855.891 acres, situated in Puna, Island and County of Hawai'i, State of Hawai'i (the Property), more particularly described in Exhibit "A" attached hereto.

The Parties wish to work together to provide proper management of the Property and to develop OHA's own capacity to manage lands independently from DLNR. The Parties further wish to preserve the Property's natural and cultural resources and maintain traditional and customary practices on the Property through appropriate resource management.

As discussed herein, DLNR will bear initial management responsibility as soon as the Property is designated as a forest reserve. However, management responsibility will be turned over to OHA as OHA acquires capacity, experience and expertise in land management.

II. TERMS

Subject to the conditions identified in part III below, the Parties agree as follows:

1. Purchase of the Property. OHA will purchase the Property with funding from the USDA Forest Service Forest Legacy Program and OHA. The exact funding levels are not known at this time but are expected to be approximately \$3.4 million from the Forest Legacy Program with the balance to be paid by OHA. No DLNR funds will be used for the purchase.

2. Title. Title to the Property will be held in fee by OHA pursuant to authority created by Article XII of the State Constitution and Haw. Rev. Stat. § 10-4 (Cum. Supp. 2004) and Haw. Rev. Stat. § 10-5 (Cum. Supp. 2004).

3. Forest Reserve Designation. The Parties will cooperate in designating the Property as a forest reserve pursuant to Haw. Rev. Stat. chapter 183. The designation process shall commence as soon as possible and shall proceed as expeditiously as is possible under applicable law. Notwithstanding any other provision herein, DLNR or OHA may develop and improve the Property through plantings and erosion control and may construct such improvements as may be agreed herein or otherwise.

4. Compliance with Federal Grant Requirements. Management, use, and future disposition of the Property shall comply with all applicable U.S.D.A. Forest Legacy Federal Grant requirements and with applicable United States Department of Agriculture ("USDA") Forest Service Forest Legacy Program Guidelines (the "Guidelines"), until such time as the grant requirements and/or the Guidelines no longer apply or OHA is released of its federal grant obligations by the Forest Service/ Forest Legacy Program, other federal governing agency, or through an Act of the U.S. Congress. A copy of the Guidelines is attached as Exhibit "B".

5. Compliance with State Forest Reserve Requirements. Management, use, and future disposition of the Property shall comply with all applicable State of Hawai'i laws, rules, and regulations governing and relating to forest reserves as described in Haw. Rev. Stat. chapter 183 until such time as the Property is no longer held or designated as forest reserve property. In the event of conflict between requirements of federal and state law, federal law shall govern pursuant to Haw. Rev. Stat. § 29-15 (1993).

Use of the Property will also comply with the Findings of Fact and Conclusions of Law and Final Declaratory Judgment/Injunction issued on August 26, 2002 in *Pele Defense Fund vs. The Estate of James Campbell, Deceased et. al*, Civil No. 89-089, (the "PDF Final Judgment"), a true and correct copy of which is attached as Exhibit "C," except that no other statement herein, in the Plan, or in the PDF Final Judgment shall override or supercede the requirements of federal or state law, (including case law and regulations) relating to undeveloped real property.

6. Management Responsibility. As more fully described below, the Parties intend to develop a Comprehensive Management Plan (the "Plan") based upon the terms of this Agreement. All management and maintenance responsibilities and practices will conform with mutually agreed upon requirements set forth in therein.

All provisions of the Plan will be subject to the availability of funding.

Once the Property is designated as forest reserve (but not before), DLNR shall bear the primary responsibility for the management and maintenance of the Property for up to ten years after the signing of this Agreement or until such time as the Parties determine and agree that OHA is capable of assuming management responsibilities required by the Plan, whichever time is shorter.

7. Timeline. The Parties will make a good faith effort to complete the following in three (3) years: (a) develop the Plan, ~~(b) plug and abandon the geothermal well located on the Property,~~ (c) seek funding from other sources to assist with the management costs of the Property, and (d) remove the Geothermal Resource Subzone designation as discussed below in paragraph 16. Status reports concerning management issues, transfer of expertise, and property maintenance will be presented to and considered by the OHA board and the Board at least annually. Appropriate changes to the assignment of duties (primarily from DLNR to OHA), funding levels, management, and enforcement of regulations related to the Property may be made upon mutual agreement between the Parties.

8. Assumption of Management Responsibilities/Transfer of Knowledge. Transfer of management responsibility shall follow the Plan guidelines. The Plan shall define how over time the Parties will share responsibility for management of the Property, provided that full management responsibilities of the Plan shall be relinquished by DLNR and transferred to OHA within ten years of the signing of this Agreement.

OHA and DLNR shall each designate a person to act as liaison for transition of enforcement responsibilities and begin work on transition of responsibilities. The duties of each such person will include, but not be limited to, responsibility for general coordination of all Property activities, development of the Plan, seeking funding from the State Legislature and/or from external sources, seeking the support of the County of Hawai'i, implementing management activities, facilitating the transfer of knowledge from DLNR to OHA pertaining to land ownership and management, undertaking the necessary duties to change the Property designation to a forest reserve, and supervising public hearings and meetings. Additionally, OHA and DLNR shall each designate a person to act as liaison for transition of enforcement

responsibilities, development and implementation of transition plan and coordinating enforcement of applicable regulations.

9. Revocation. Upon agreement by the parties, DLNR shall cooperate with OHA to seek a revocation or suspension of designation as a forest reserve in the manner provided by law.

10. Interim Plan. Prior to closing of OHA's purchase of the Property, the Parties shall develop an interim management plan for submission to the Forest Legacy Program. The interim plan shall provide guidelines for the management and protection of the property by the Parties, as funds and capacity permit, until such time as the property is designated a forest reserve and until such time as the Comprehensive Management Plan can be implemented.

11. Comprehensive Management Plan. Upon execution of this Agreement, the Parties agree to develop the Plan for the Property. The Parties shall form an advisory council for the development of the management plan consisting of the Pele Defense Fund and other interested community members mutually selected by DLNR and OHA. The cost of developing the Plan shall be funded as provided in paragraph 15 below.

The Plan shall be developed according to the following conditions and may contain such other terms and conditions agreed to by the Parties:

a. *Assessment.* The Plan shall include an inventory and assessment of natural and cultural resources, historic sites, risks, threats to resources, interpretive values, and economic development potential. The section on economic development potential shall identify those uses consistent with: status as a forest reserve, the protection of traditional and customary uses of the site, sustainable use and protection of the resources of the site, and the terms of the Forest Legacy Program funding.

b. *Existing Improvements.* Subject to the availability of funding and identification as a priority action under the Plan, management of the Property shall include maintenance and repair of existing roads and historical sites on the Property.

c. *Allowable Uses of Property.* Subject to requirements of state law applicable to forest reserves, to any other applicable state law, to any applicable requirements of the Forest Legacy Program, and to future revision by the Parties, allowable uses of the Property shall include but are not limited to the following:

(1) *Public Access.* Public Access shall be allowed to the extent required by federal and state law and the Guidelines. Public access beyond that required by law and the Guidelines will be determined by the Parties based on a comprehensive inventory of the Property, which will identify and assess the access points, the natural and cultural resources, the historic sites, the risks, the threats to resources, and the interpretive values.

(2) *Cultural, natural resources, open space and recreational use.* The general use of the Property shall be for cultural, natural resource, and open space purposes. Passive recreational or educational purposes that require neither surface alteration subject to the local grading ordinance nor other development of the land may be permitted unless specifically excluded by the Plan. The Plan may, but need not, allow development of recreational use infrastructure and facilities such as trails, access roads, parking, fencing, cultural and environmental education facilities (e.g. kiosks).

(3) *Preservation of Plant and Wildlife Habitat.* The Parties will protect and enhance native plant and wildlife habitat, the natural, scenic and open-space nature of the Property.

(4) *Traditional Hunting and Gathering Practices.* Wildlife hunting not

prohibited by applicable laws or regulations may be permitted, if it is conducted in a manner that does not significantly deplete native wildlife resources or damage the ecology of the Property. Traditional hunting and gathering practices shall be governed in accordance with federal and state law, the Guidelines, and the PDF Final Judgment.

(5) Water. Subject to written approval from OHA and DLNR, exploration or extraction of water resources and any activity associated therewith, with the exception of water needed for management practices agreed upon in the management plan may be permitted as long as there is no damage to natural resources, existing forests, or soils.

d. *Prohibited Uses.* The following “non-forest uses” as defined by the Forest Legacy Program are uses of the land inconsistent with maintaining forest cover and shall be prohibited on the Property.

(1) Mineral Extraction. Any exploration or extraction of oil, gas, minerals, steam, hydrocarbons, soil, sands, gravel or other material on or beneath the Property for the purpose of exporting these materials/resources off the Property shall be prohibited.

(2) Grading and Excavation. Alteration of landforms by grading or excavation of topsoil, earth, or rock, inconsistent with Forest Legacy Program guidelines shall be prohibited. Alteration of landforms necessary or appropriate for appropriate public access, cultural restoration or wildlife or forest management, or emergency purposes (such as fire fighting) and in keeping with good natural resource management practices shall not be prohibited.

(3) Subdividing Land. The division, subdivision, partition, or de facto subdivision of the Property inconsistent with the Forest Legacy Program guidelines shall be prohibited. However, this paragraph does not prohibit the lease, license, or other temporary

disposition of a portion of the Property or a voluntary conveyance to a governmental or nonprofit entity for conservation or public access purposes.

(4) Commercial and Industrial Uses. The establishment of any commercial or industrial uses inconsistent with the Forest Legacy Program Guidelines shall be prohibited.

(5) Signage. The construction, placement, or erection of any sign or billboards, excepting signs necessary for management purposes or to control unauthorized or dangerous activities, or signs, appropriately placed, that acknowledge the financial support of donors in the purchase of the Property shall be prohibited.

A preliminary investigation of potential access and trail routes will be conducted to consider exposure to specific dangerous natural conditions. It is the intent of the Parties to examine using the warning sign design and placement process pursuant to Act 82 SLH 2003, and the ancillary Title 13, Chapter 8 Hawai'i Administrative Rules as appropriate.

(6) Storage of Waste. The storage, dumping or accumulation of trash, garbage, or waste on the Property shall be prohibited.

(7) Exotic Plants or Animals. The introduction of invasive exotic animals or plants that would alter or impair the conservation values of the Property shall be prohibited.

12. License Agreement. On September 9, 1996, the Campbell Estate entered into a well monitoring license agreement with the DLNR, which license covers and affects the property. Unless otherwise agreed, all rights and obligations that exist pursuant to the License Agreement (as amended) shall remain unaffected by this Agreement.

13. Plugging and Abandonment. The Parties shall work together to secure funding for plugging and abandonment of the existing geothermal well shaft on the Property. The

Parties shall make reasonable and diligent efforts to plug and abandon the existing geothermal well site on the Property within three years after acquisition of the Property by OHA. To facilitate the plugging of the well in an expedient manner, the Parties agree to the following:

a. *Legislative Funding.* The Parties shall work cooperatively to secure funding from the State Legislature during the 2006 legislative session for the DLNR to plug, and abandon the well. DLNR agrees to seek funding in subsequent legislative sessions as necessary

b. The Parties shall work cooperatively to seek appropriate federal funding for plugging and abandonment of the well. The Parties realize and acknowledge, however, that such funds are not presently available.

c. *Alternative Funding Agreement.* If parts a. and b. immediately above do not adequately cover the costs of plugging and abandonment, OHA agrees to seek OHA board approval to cost-share up to TWENTY PERCENT (20%) of the total project costs of plugging and abandonment of the well. The Parties shall encourage the County of Hawai'i to partner in the effort to plug and abandon the well and to cost-share up to THIRTY PERCENT (30%) of the total project costs.

14. *Additional Resource-Management Funding.* The Parties shall work cooperatively and in good faith to secure specific funding for natural and cultural resource management and enforcement on the property.

15. *Management Funding.* For each year during which DLNR continues to manage the Property (that is, until management responsibility is turned over to OHA as contemplated herein), OHA shall transfer to DLNR up to TWO HUNDRED TWENTY EIGHT THOUSAND AND NO/100 DOLLARS (\$228,000.00) for the development of the Plan, management of the Property, and for protection and enforcement actions on the Property. By

April 1 of each year during which DLNR continues to manage the property, OHA will make a good faith effort to determine the amount of funding to be transferred to DLNR for its use during the next fiscal year. The amount of funds transferred will determine the level of management and protection that is implemented. The said amount is to be expended as agreed by the Parties. Subject to appropriation and allotment, DLNR will contribute up to ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) annually either in appropriated funds (obtained from various sources) or through in-kind expenditures from existing resources, volunteer efforts, and/or budgets for the development of the Plan and management of the property, by providing the liaison person described above, or by providing on site management capacity, transfer of knowledge and active management practices. An estimated budget for illustration purposes only is shown in Exhibit "D."

At least quarterly, DLNR shall provide to OHA an expenditure report, which provides a description of expenditures made during the prior quarter as well as a summation of quarterly expenditures and cumulative expenditures to date. The report should provide a description of each expenditure, identify the amount expended and identify whether the expenditure was an in-kind expenditure or from appropriated OHA or DLNR funds. DLNR shall also report to OHA the assigned DAGS number for all assets including property, plant and equipment that are acquired with OHA funds. Upon complete transfer of the management duties to OHA as contemplated herein, DLNR shall transfer assets purchased with OHA funds to OHA.

16. Geothermal Subzone Designation Removal. The Parties shall work together to remove the Geothermal Resource Subzone designation specified under Haw. Rev. Stat. § 205-5.1 (2001) and Haw. Rev. Stat. § 205-5.2 (2001), from the Property.

17. If any of the terms identified above are deemed unachievable, unfeasible, impractical, or not viable for any reason, the Parties agree in good faith to cooperate and work together to find alternate feasible and acceptable terms that will facilitate the intended goals.

18. The Parties agree in good faith to cooperate with each other to accomplish the intended goals identified above. Cooperation includes, but is not limited to, providing copies or access to documents referenced in this Agreement, providing copies of or access to other relevant documents, and providing information that may facilitate the intended management transfer.

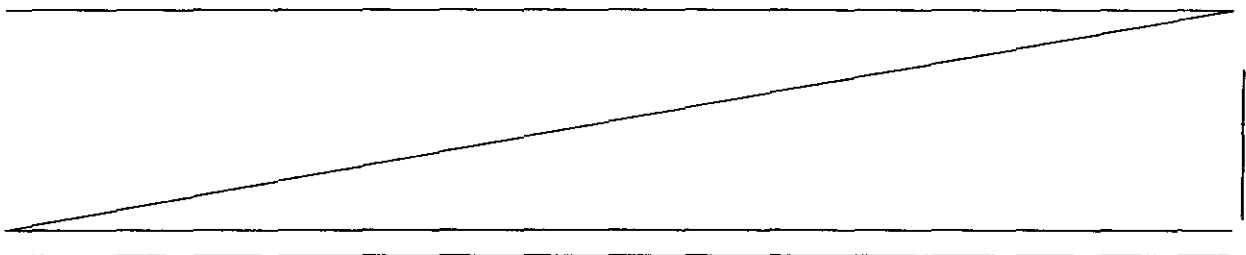
III. CONDITIONS

1. Governing Law. This Agreement shall be governed by the laws of the State of Hawai'i.

2. Amendments. This Agreement may be amended only by the written agreement of the parties hereto.

3. Costs. Except as otherwise provided or agreed, each party shall bear its own costs and expenses relating to this Agreement and the Property.


4. Binding Effect. Upon execution of this Agreement by both Parties, the Parties shall cooperate and negotiate in good faith conditions and terms to complete and execute the definitive documents and instruments necessary to accomplish the intended goals. Terms and conditions of any future agreement shall be consistent with this Agreement and upon such other terms as the Parties shall agree.



The foregoing accurately reflects the Agreement between the Parties. We indicate our acceptance of this document and the agreement herein by executing this Agreement.

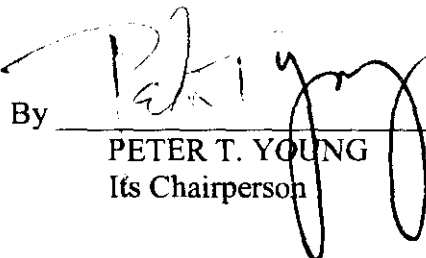
OFFICE OF HAWAIIAN AFFAIRS

Date 6-27-06.

By 
CLYDE W. NĀMUʻO
Its Administrator

BOARD OF LAND AND NATURAL
RESOURCES

Date 6-27-06

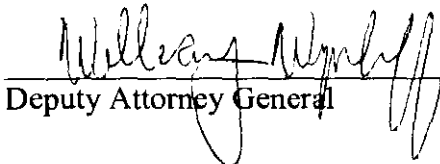
By 
PETER T. YOUNG
Its Chairperson

APPROVED AS TO FORM:


Ernest M. Kimoto, Senior Staff Attorney
Office of Hawaiian Affairs

Date: June 27, 2006

APPROVED AS TO FORM:


Deputy Attorney General

Date: 6/27/06

EXHIBIT "A"
Legal Description of the Wao Kele o puna PROPERTY

-PARCEL ONE:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Land Patent Grant Number S-15,666 to The Trustees under the Will and of the Estate of James Campbell, deceased) situate, lying and being at Puna, Island and County of Hawaii, State of Hawaii, being PARCEL A, same being portions of the Government Land of Makuu, Kaohe, Kaimu, Kehena, Kapaahu and Kamaili (C.S.F No. 20,315 dated December 13, 1985), and thus bounded and described as per survey of Raymond S. Nakamura, Land Surveyor, with the Survey Division, Department:

Beginning at the west corner of this parcel of land and on the south boundary of Land Court Application 1053, the coordinates of said point beginning referred to Government Survey Triangulation Station "OLAA" being 47,769.67 feet South and 8,228.41 feet West, thence running by azimuths measured clockwise from true South:

- | | | | |
|-----|--------------|-----------|--|
| 1. | 240° 05' 12" | 24,288.19 | feet along Land Court Application 1053; |
| 2. | 345° 23' 30" | 1,348.57 | feet along the remainder of Government Lands; |
| 3. | 313° 00' | 1,221.60 | feet along the remainder of Government Lands; |
| 4. | 330° 16' | 4,682.10 | feet along the remainder of Government Lands; |
| 5. | 262° 03' | 1,960.70 | feet along the remainder of Government Lands; |
| 6. | 290° 02' | 627.40 | feet along the remainder of Government Lands; |
| 7. | 314° 28' | 4,581.80 | feet along the remainder of Government Lands; |
| 8. | 314° 47' | 744.40 | feet along the remainder of Government Lands; |
| 9. | 314° 12' | 735.30 | feet along the remainder of Government Lands; |
| 10. | 315° 31' | 1,825.53 | feet along the remainder of Government Lands; |
| 11. | 40° 41' | 13.81 | feet along the north side of 20-Foot Road; |
| 12. | 338° 15' | 14.99 | feet along the west side of 20-Foot Road; |
| 13. | 60° 05' 12" | 25,840.22 | feet along Parcel B of Government Lands; |
| 14. | 140° 23' | 16,220.18 | feet along Parcel B of Government Lands to the point of beginning and containing an area of 9,012 acres, more or less. |

-PARCEL TWO:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Land Patent Grant Number S-15,666 to The Trustees under the Will and of the Estate of James Campbell, deceased) situate, lying and being at Puna, Island and County of Hawaii, State of Hawaii, being PARCEL B, same being portions of Government Land of Makuu, Kaohe, Kaimu, Kehena, Kapaahu and Kamaili (C.S.F. No. 20,316 dated December 13, 1985), and thus bounded and described as per survey of Raymond S. Nakamura, Land Surveyor, with the Survey Division, Department:

Beginning at the west corner of this parcel of land and at an angle on the south boundary of Land Court Application 1053, the coordinates of said point of beginning referred to Government Survey Triangulation Station "OLAA" being 55,748.70 feet South and 22,096.90 feet West, thence running by azimuths measured clockwise from true South:

- | | | | |
|-----|--------------|-----------|--|
| 1. | 240° 05' 12" | 16,000.00 | feet along Land Court Application 1053; |
| 2. | 320° 23' | 16,220.18 | feet along Parcel A of Government and; |
| 3. | 240° 05' 12" | 25,840.22 | feet along Parcel A of Government and; |
| 4. | 338° 15' | 3,262.76 | feet along the west side of the 20-Foot Road; |
| 5. | 340° 23' | 19.26 | feet along the west side of the 20-Foot Road; |
| 6. | 342° 31' | 250.51 | feet along the west side of the 20-Foot Road; |
| 7. | 337° 27' | 156.17 | feet along the west side of the 20-Foot Road; |
| 8. | 347° 14' | 271.04 | feet along the west side of the 20-Foot Road; |
| 9. | 348° 38' | 331.85 | feet along the west side of the 20-Foot Road; |
| 10. | 353° 51' | 125.10 | feet along the west side of the 20-Foot Road; |
| 11. | 359° 30' | 1,278.10 | feet along the west side of the 20-Foot Road; |
| 12. | 358° 59' | 2,128.77 | feet along the west side of the 20-Foot Road; |
| 13. | 332° 38' | 221.69 | feet along the west side of the 20-Foot Road; |
| 14. | 315° 33' | 287.92 | feet along the west side of the 20-Foot Road; |
| 15. | 258° 17' | 9.45 | feet along the south side of the 20-Foot Road; |
| 16. | 352° 29' | 6,915.35 | feet along Parcel C of Government Lands; |
| 17. | 56° 27' | 1,460.60 | feet along Lots 3-B and 3-A of Upper Kaimu Homesteads; |

18. 39° 38' 3,534.10 feet along Lot 3-A of Upper Kaimu Homesteads, Grant 6571 to K. Kamakani, Grant 6330 to S. Kamelamela and Grant 6328 to D. Kamelamela;
19. 53° 04' 10,520.90 feet along Government Lands;
20. 53° 31' 30" 9,863.30 feet along Grant 9275 to H. M. Holt, et al., Trustees under the Will and of the Estate of James Campbell, Deceased;
21. 148° 00' 4,100.00 feet along R.P. 8030, L.C.Aw. 8559-B, Ap. 14 to William C. Lunalilo;
22. 116° 00' 8,150.00 feet along R.P. 8030, L.C.Aw. 8559-B, Ap. 14 to William C. Lunalilo;
23. 126° 59' 25,105.30 feet along R.P. 8030, L.C.Aw. 8559-B, Ap. 14 to William C. Lunalilo to the point of beginning and containing an area of 16,843.891 acres, more or less.

EXHIBIT "B"

FINAL

Forest Legacy Program Implementation Guidelines



June 30, 2003

**USDA Forest Service State & Private Forestry Cooperative Forestry
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INTRODUCTION

The Cooperative Forestry Assistance Act (CFAA) of 1978, as amended, (16 U.S.C. 2101 et. seq.) recognizes that the majority of the Nation's productive forest lands are in private ownership; that private landowners are facing increased pressure to convert their forest lands to other uses; that greater population density, user demands and restrictions on Federal and other public lands are placing increased pressures on private lands to provide a wide variety of products and services from working forests including timber and other forest commodities, fish and wildlife habitat, watershed function and water supply, aesthetic qualities, historical and cultural resources, and recreational opportunities; and that good stewardship of privately held forest lands requires a long-term commitment that can be fostered through a partnership of Federal, State, local government and individual efforts.

In 1990, the Forest Legacy Program (FLP) was established to promote the long-term integrity of forestlands. The Secretary was directed to establish the FLP in cooperation with State, regional, and other units of government. In carrying out this mandate, the Secretary of Agriculture is authorized to acquire lands and interests in lands in perpetuity for inclusion in the FLP. Landowner participation in the FLP, including the sale of lands and interests in lands, is entirely voluntary. The Program is implemented through State participation, consistent with these National FLP guidelines, and as described in each State Assessment of Need. The FLP goals and objectives are accomplished through Forest Service (FS) cooperation with State partners, Federal agencies, local units of government, forest landowners and other partners. The FLP identifies and protects environmentally important private forestlands that are threatened by conversion to nonforest uses and provides the opportunity for continuation of traditional forest uses, such forest management activities and outdoor recreation.

The guidelines are organized in three parts:

PART 1 - General Program Guidelines: Program direction applicable to all aspects of the FLP.

PART 2 - State Grant Program Guidelines: Program direction applicable to States and Forest Service (FS) Regions/Area/IITF where a State has elected the State grant option and where ownership of lands or interests in lands is vested in a State or subdivision of a State.

PART 3 - Federal Acquisition Program Guidelines: Program direction applicable to States and FS Regions/Area/IITF selecting the Federal acquisition and ownership process, where ownership of lands or interests in lands is vested in the United States (U.S.).

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PART 1 - GENERAL PROGRAM GUIDELINES

I. Authority and Purpose of the Forest Legacy Program (FLP)

A. Authority The Cooperative Forestry Assistance Act (CFAA) of 1978, as amended, (16 U.S.C. 2101 et. seq.) provides authority for the U.S. Secretary of Agriculture (Secretary) to provide financial, technical, educational, and related assistance to States, communities, and private forest landowners. Section 1217 of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (P.L. 101-624:104 stat.3359; 16 U.S.C. 2103c), also referred to as the 1990 Farm Bill, amended the CFAA and directs the Secretary to establish the FLP to protect environmentally important forest areas that are threatened by conversion to nonforest uses. This authority continues indefinitely. Through the 1996 Farm Bill (Federal Agricultural Improvement and Reform Act of 1996; P.L. 104-127; Title III - Conservation; Subtitle G - Forestry; Section 374, Optional State Grants for Forest Legacy Program), the Secretary is authorized, at the request of a participating State, to make a grant to the State to carry out the FLP in that State, including the acquisition by the State of lands and interests in lands.

B. Purpose of the Forest Legacy Program The purpose of the FLP is to ascertain and protect environmentally important forest areas that are threatened by conversion to nonforest uses.

FLP seeks to promote forestland protection and other conservation opportunities. Such purposes shall include the protection of important scenic, cultural, fish, wildlife and recreational resources, riparian areas and other ecological values. Traditional forest uses, including timber management, as well as hunting, fishing, hiking, and similar recreational uses are consistent with purposes of the FLP. Both purchased and donated lands and interests in lands through the use of conservation easements and fee-simple purchase are used to acquire forested land meeting Forest Legacy purposes from willing sellers or donors.

C. Delegations of Authority The Secretary has delegated authority to administer all aspects of the FLP to the Under Secretary for Natural Resources and Environment (7 CFR 2.20(a)(2)(xvi)) who in turn has delegated the authority to the Chief of the Forest Service (7 CFR 2.60(a)(16)). Delegations only apply within the U.S. Department of Agriculture and its agencies. The role of State and Regional programs, and the right of States to elect the State Grant Option, are contained in the authorizing statute and these program implementation guidelines.

II. Description of Terms and Abbreviations

Assessment of Need (AON) is a document produced by a State, or a federally recognized Indian Tribe, in consultation with the State Forest Stewardship Coordinating Committee (SFSCC). The AON contains the an assessment of the forests and forest

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uses, a description of forces that are converting forests to nonforest uses, describes Eligibility Criteria developed by the State to identify important forest areas to be proposed as Forest Legacy Areas (FLA), and acts as a guide to implementation of FLP in the State.

Assessment of Need (AON) Amendment is a document produced by a State to amend their AON, to add or delete Forest Legacy Areas (FLA), or to modify the Eligibility Criteria.

CFAA is the Cooperative Forestry Assistance Act of 1978, P.L. 95-313, 92 stat. 365, 16 U.S.C., 2101 et seq. (as amended through P.L. 107-195, June 16, 2002).

Conservation Easement is a legal agreement a property owner makes with a governmental entity or a nonprofit organization to restrict activities allowed on the land in order to protect specified conservation values. Easement restrictions are tailored to the particular property and to the interests of the individual landowner. All FLP conservation easements are held in perpetuity.

Eligibility Criteria are a set of factors developed by the State lead agency, in consultation with the State Forest Stewardship Coordinating Committee (SFSCC), to evaluate geographic areas to determine if they contain significant environmental values to be considered an 'important forest area' and contain "threats" of conversion to be eligible as a Forest Legacy Area (FLA).

Federal Appraisal Standards are those standards contained in the publication entitled "Uniform Appraisal Standards for Federal Land Acquisitions: Interagency Land Acquisition Conference, 2000," or subsequent amendments or updates. These standards are available for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 204029328 (ISBN 0-16-038050-2) or online at <http://www.usdoj.gov/enrd/land-ack/>

Forest Legacy Area (FLA) is a geographic area with important forest and environmental values, that satisfies identified Eligibility Criteria and has been delineated, described, and mapped in a State's AON for the FLP. Acquisition of lands and interests in lands for the FLP can only occur within approved FLAs.

Forest Legacy Area (FLA) Boundary Adjustment is a minor change to an existing FLA to create a more logical or manageable boundary.

Forest Legacy Program (FLP) Project is an individual or series of land or interest in land acquisition transaction(s). The transaction(s) can be on an individual tract or multiple tracts in a distinct geographical area. A FLP project relates to a single funding event in a given fiscal year. FLP projects can have a single parcel that can be completed at one closing or more than one parcel that can be completed in a succession of closings. If a successive FLP project is proposed on a parcel or in a distinct geographic area each transaction is treated as an independent unit in the project selection process and funding is not guaranteed.

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Forest Service (FS) is the United States Department of Agriculture Forest Service.

Forest Service Region/Area/IITF refers to the field units of the Forest Service responsible for FLP management and oversight within the Forest Service Regions, Northeastern Area (Area) or International Institute of Tropical Forestry (IITF).

Forest Stewardship Plans, or multi-resource management plans, are prepared with the purpose of achieving long-term stewardship of forestland. Such plans identify landowner objectives and describe actions to protect and manage soil, water, range, aesthetic quality, recreation, timber, and fish and wildlife resources, and other conservation values identified on the tract. Plans are to be prepared by a professional resource manager. A Forest Stewardship Plan that meets the requirements of the Forest Stewardship Program or a multi-resource management plan is required for FLP qualification. The State Forester or equivalent, or their designee must approve the plan. (See Appendix F for sample content of a Forest Stewardship Plan).

Full Fee Purchase is a land conveyance where a purchaser acquires all rights, title and interest in a property from a seller or owner. It is also known as fee simple or fee acquisition.

Geographic Regions are the collection of States that makeup the National Association of State Foresters (NASF) Regions. The three regions are: North (consisting of the States within the FS Northeastern Area), South (consisting of all the States within the FS Southern Region, and the Territories of the International Institute of Tropical Forestry), and the West (consisting of all the States within the FS Northern, Rocky Mountain, Intermountain, Southwestern, Pacific Southwest (including the Commonwealth of the Northern Mariana Islands, Guam and American Samoa), Pacific Northwest and Alaska Regions. (See Appendix B for a map of the Forest Service's Regions/Area/IITF)

Indirect costs relate to costs of the management and administration of the FLP. Indirect costs, unlike salary, which is a direct cost, are defined as costs not readily assignable to a specific legacy acquisition. (See OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments," for a description of indirect and direct costs).

In-kind contributions are non-cash contributions, including third-party contributions. In-kind contributions must be expenses necessary to accomplish program activities, and allowable if the Federal Government were required to pay for them. (See Appendix C for applicable OMB Circulars)

Interests in Land are a right, claim, or legal share in real property that are less than the full title.

Land Trust is a nonprofit organization, as described in 501(c) of the Internal Revenue Code of 1986, that protects land by working with landowners who wish to donate or sell fee title or conservation easements to maintain conservation values associated with the land.

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Market Value is the amount in cash, or in terms reasonably equivalent to cash, for which in all probability the property would be sold by a knowledgeable owner willing but not obligated to sell to a knowledgeable purchaser who desires but is not obligated to buy. (*Uniform Appraisal Standards for Federal Land Acquisitions: Interagency Land Acquisition Conference, 2000, p.4.*)

Multi-State Entity is a government-established organization involving two or more States or Indian tribes whose jurisdiction encompasses all or portions of the land area of an FLA(s).

National Association of State Foresters (NASF) is the organization representing State forestry organizations in all 50 States, the territories and the District of Columbia. Nonfederal Cost Share refers the nonfederal cost-share required to receive FLP funding. There are three main categories of activities that meet this requirement: 1) the value of land, or interests in land, dedicated to the FLP that is not paid for by the Federal government, 2) nonfederal costs associated with program implementation, and 3) other nonfederal costs associated with a grant or other agreement which meets FLP purposes. The nonfederal cost-share must be documented, and in the case of a grant, must meet the timing, terms and conditions of the grant.

Nonforest Uses-

Noncompatible -nonforest uses are uses of the land inconsistent with maintaining forest cover including, but not limited to, activities that result in extensive surface disturbance such as residential subdivisions, commercial development, and mining. These uses generally should be excluded from FLP conservation easements or land purchases. FLP funds should only be used on parcels with forestland as defined in the State's AON.

Compatible - nonforest uses are nonforest uses of the land that may be compatible with forest uses as part of an undeveloped landscape, including cultivated farmland, pasture, grassland, shrubland, open water, and wetlands. These nonforest uses should be less than 25 percent of the total area. Forest Legacy funds should only be used on parcels with forestland as defined in a State's AON. Other funding sources may be used to protect nonforested areas on those parcels with less than the minimum required forest cover.

Nontrust Allotment Lands are privately owned fee simple lands owned by tribal members and if they are forested, are eligible for the FLP when they are located within an approved FLA. Trust lands and reservations are already protected through the trust relationship between the U.S. Department of the Interior and the tribe and are ineligible for the FLP.

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Pass-through describes a land transaction whereby a third party, such as a land trust, acquires interests in lands with the intent to convey such interests to a unit of government. The transaction can include a full or partial donation, or sale at market value.

Payment in Lieu of Taxes (PILT) is made by tax-exempt entities, including the Federal government, to compensate local jurisdictions for tax revenues foregone as a result of ownership by a tax-exempt owner. Any FLP tract acquired in fee and held by the FS is eligible for PILT payments (entitlement land as defined at 31 U.S.C. 6901). Federal funds for PILT are not authorized for any land or interests in land held by nonfederal entities, or for conservation easements held by the United States.

Program Funds are FLP funds that are appropriated by Congress and allocated by the FS to three categories: Project funds, Administrations funds, and AON Preparation funds.

Project Evaluation Criteria are developed by the States, in consultation with the State Forest Stewardship Coordinating Committees (SFSCC), to evaluate the eligible tracts submitted by interested landowners for inclusion in the FLP.

Relocation refers to the provision in the Uniform Relocation Assistance and Real Estate Property Acquisition Policies Act of 1970 (PL 91-646 or 42 U.S.C. 4601) which requires Federal agencies and programs to pay for the relocation of a person displaced by a federally funded real estate transaction.

Reserved Areas are designated areas where nonforest uses (e.g. house, barn, remote recreation camps, etc.) are or will be allowed, but are inseparable from the land holding and do not have a detrimental effect on the conservation easement values. These areas shall be defined and described in the conservation easement and may be restricted in terms of their use, or provisions made through cost and time to cure and treatment. To the extent possible these areas of noncompliance should be excluded from the FLP project.

Reserved Interest Deed is where the grantee (government) acquires all rights, titles, and interests in a property, except those rights, titles, and interests that may run with the land that are expressly reserved by a grantor (landowner).

Secretary is the U.S. Secretary of Agriculture.

State refers to any of the 50 States, Puerto Rico, Guam, the United States Virgin Islands, the Commonwealth of the Mariana Islands, and American Samoa participating in the FLP.

State Forest Stewardship Coordinating Committees (SFSCC) are defined, and their duties are described, in Section 19(b) of the CFAA (16 U.S.C. 2113). They are chaired and administered by the State Foresters, or equivalent State officials, with membership composed of representatives from the following agencies, organizations, or individuals:

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Forest Service; Natural Resources Conservation Service; Farm Services Agency; Cooperative State Research, Education, and Extension Service; local government; consulting foresters; environmental organizations; forest products industry; forest land owners; land trusts; conservation organizations; the State fish and wildlife agency; and others determined appropriate by the Secretary. The SFSCC makes recommendations to the State lead agency regarding the AON, AON amendments, and the determination of project priorities.

State Lead Agency is that unit of State government responsible for coordinating the establishment and implementation of the FLP in the State, as designated by the Governor or pursuant to State law. The State lead agency is usually a forestry agency, but may be another natural resource agency.

Tribal Assessments of Need- An AON is developed by a federally recognized Indian Tribe in cooperation with the State and the SFSCC. Only nontrust allotment lands are eligible for FLP. Lands or interests in lands purchased under a Tribal FLP can be through a grant to a cooperating State or through the Federal acquisition option.

Working Lands Conservation Committee is a committee of the NASF having coordination and consultation responsibilities within that organization regarding the FLP.

III. National Environmental Policy Act (NEPA)

NEPA applies to certain proposed actions of the Federal Government. NEPA does not apply to the independent actions of States or private property owners. It has no applicability to a private property owner's use or development of his/her property rights, nor the development of a State's FLP. It could apply to Federal agency actions undertaken on private property if the U.S. acquired a right to permit or deny certain land uses and then proposed to exercise that right, but in such an instance it would be the U.S. that would be required to satisfy NEPA requirements, not the private owner.

It should be known that:

1. 1. A Programmatic Environmental Assessment and a Finding of No Significant Impact was completed for the national FLP and signed by the Chief of the Forest Service.
2. 2. Under the Federal acquisition option, the FS NEPA regulations (Forest Service's Environmental Policy and Procedures Handbook 1909.15-92.1, effective 9/21/92), the acquisition of an individual Forest Legacy tract and/or easement may be categorically excluded from the preparation of an Environmental Impact Statement or an Environmental Assessment unless scoping indicates extraordinary circumstances exist.

IV. Coordination with State Forestry Agencies

Whereas most State lead agencies are State Forestry agencies, and the CFAA establishes

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a broad cooperative relationship between the FS and State Foresters, the FS shall appoint a representative to coordinate with the Working Lands Conservation Committee of the NASF (or its successor) regarding the FLP. Periodically, the Director of Cooperative Forestry, and the appointed FS representative shall meet with the NASF Working Lands Conservation Committee to assess program operations, accomplishments, and policies. In States where the State Forestry agency is not the designated State lead agency for the FLP, a coordinating mechanism shall be instituted between the State lead agency, the State Forester, and the SFSCC.

V. Assessment of Need (AON) and Identification of Forest Legacy Areas (FLA)

A State or a federally recognized Indian tribe conducts an AON, in cooperation with the SFSCC, to document their need for inclusion in the FLP, through an evaluation of current forests, forest uses, and the trends and forces causing conversion to nonforest uses. Federally recognized Indian Tribes must cooperate with the SFSCC when conducting an AON for nontrust allotments lands. The AON is intended to define the Eligibility Criteria to be used in the identification of important forest areas to be proposed as an FLA; identify and delineate the boundaries of forest areas meeting the Eligibility Criteria for designation as an FLAs; determine through analysis what defines "threatened" and "environmentally important forests"; and outline the State's project evaluation and prioritization procedures. The AON must be developed in consultation with SFSCC and approved by the State lead agency.

State lead agencies may utilize the services of land trusts or other entities in preparing the assessment. Information from existing sources may be used to prepare the AON, instead of initiating new studies that would duplicate existing data. Examples of appropriate sources include State Forest Resources Plans, State Comprehensive Outdoor Recreation Plans, growth management studies, State cultural site inventories, inventories of threatened and endangered species, and other State, regional or local plans, studies or reports. The AON shall include relevant information about both public and private lands, address the issue of how best to maintain the integrity of forestlands for future generations, and address pertinent issues as identified by the State.

At a minimum, the AON must address the following as they relate to the purpose of the FLP:

- .1. Forest resources including:
 - Aesthetic and scenic values;
 - Fish and wildlife habitat;
 - Minerals resource potential;
 - Public recreation opportunities;
 - Soil productivity;
 - Forest products and timber management opportunities;
 - Watershed values including water quality protection;
2. The present and future threat of conversion of forest areas to nonforest uses. States are responsible for defining the conversion threat(s);

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3. 3. Historic uses of forest areas, and trends and projected future uses of forest resources;
4. 4. Current ownership patterns and size of tracts, and trends and projected future ownership patterns;
5. 5. Cultural resources that can be effectively protected;
6. 6. Outstanding geological features;
7. 7. Threatened and endangered species;
8. 8. Other ecological values;
9. 9. Public recreational opportunities;
10. 10. Protected land in the State, to the extent practical, including Federal, State, and municipal lands and land trust organizations lands;
11. 11. Issues identified by the SFSCC and in the public involvement process.

Using the above information the AON shall include the following:

1. 1. Identification of applicable Eligibility Criteria;
2. 2. Identification of specific FLA(s) for designation;
3. 3. Specific goals and objectives to be accomplished by the FLP;
4. 4. Process to be used by the State lead agency to evaluate and prioritize projects to be considered for inclusion in the FLP.

The project evaluation and prioritization process outlined in the AON should reflect the direction set forth in the CFAA to give priority to lands which can be effectively protected and managed, and which have important scenic or recreational values, riparian areas, fish and wildlife values including threatened and endangered species, or other ecological values. Traditional forest uses such as forest management activities, including timber management, and outdoor recreation opportunities are considered consistent with purposes of the FLP and are encouraged on FLP tracts when consistent with the State's AON and the conservation purposes for FLP tract acquisition. The prioritization process should implement a strategy that enhances existing protected forestlands or local and State conservation strategies as outlined in the AON.

The composition of the SFSCC is defined in Section 19(b) of the CFAA (16 U.S.C. 2113). States are encouraged to broaden this composition to include interests appropriate to benefit the FLP. This committee cooperates with the State lead agency in the preparation of the AON, identification of FLA Eligibility Criteria, the identification of proposed FLAs from which lands may be entered into the FLP, and recommendation of priority lands to be considered for enrollment in the Program.

Public participation and involvement in the AON preparation is a State responsibility. In the absence of established State procedures, NEPA may serve as an appropriate model for public involvement. The State lead agency will solicit involvement and comments on the AON from the public including State and local governments. The goals of public involvement include hearing concerns and views from interested and affected individuals and organizations, receiving new information, identifying and clarifying issues.

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Based on the State-wide AON, the State lead agency, in consultation with the SFSCC, identifies specific geographic FLAs that meet the Eligibility Criteria, and recommends them to the FS for designation as of a FLA.

States are encouraged to cooperate in the identification of FLAs that cross State boundaries and to work together to coordinate acquisitions of lands or interests in lands that have complementary purposes. However, program implementation is undertaken by the individual States (State Grant Option) or by the FS (Federal Option).

The identification of proposed FLAs must include:

1. 1. Location of each geographic area on a map and a written description of the proposed FLA boundary;
2. 2. Summary of the analysis used to identify the FLA and its consistency with the Eligibility Criteria;
3. 3. Identification of important environmental values, and how they will be protected and conserved;
4. 4. The conservation goals or objectives in each FLA
5. 5. List of public benefits that will be derived from establishing each FLA;
6. 6. Identification of the governmental entity or entities that may hold lands or interests in lands (State grant option) or may be assigned management responsibilities for the lands and interests in lands enrolled in the program (Federal option); and
7. 7. Documentation of the public involvement process and analysis of the issues raised.

VI. Eligibility Criteria for Establishing Forest Legacy Areas (FLAs)

The CFAA directs the Secretary to establish Eligibility Criteria for the designation of FLAs, in consultation with the SFSCC. These criteria should be based upon the FLP purpose to protect environmentally important forest areas that are threatened by conversion to nonforest and be further developed through the AON.

FLA boundaries must encompass forestlands with significant environmental and other resource-based values. Areas may also include nonforested areas such as farms and villages if they are an integral part of the landscape and are within logical boundaries. Since FLA boundaries may not correspond to property boundaries, tracts located partially within the geographically defined FLA are eligible for the FLP, upon approval of a boundary adjustment by the FS Region/Area/IITF.

Indian reservations and tribal lands may have important features on the forested landscape. Indian tribes and States are encouraged to collaborate and to consider only nontrust allotment lands for designation as, or inclusion within, a FLA. Other tribal lands are already protected through the trust relationship between the U.S. Department of the Interior and the tribe and are ineligible for the FLP.

States are responsible for determining what defines "threatened" and "environmentally important forest areas" in the State. However, environmentally

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important forest areas shall contain one or more of the following important public values, as defined by the States:

1. 1. Timber and other forest commodities
2. 2. Scenic resources;
3. 3. Public recreation opportunities;
4. 4. Riparian areas;
5. 5. Fish and wildlife habitat;
6. 6. Known threatened and endangered species;
7. 7. Known cultural resources;
8. 8. Other ecological values.

The FS, State or unit of State or local government may only acquire lands and interests in lands identified within a FLA under FLP authority on a willing seller/willing buyer basis.

VII. AON and Amendment Approval

The State lead agency must submit the AON, including proposed FLAs and Eligibility Criteria, to the FS Region/Area/IITF. The FS Region/Area/IITF with input from the FS Washington Office reviews the AON and works with the State lead agency to complete the AON. Once finalized, the FS Washington Office forwards the AON to the Secretary for final approval. Final approval establishes the FLP for the State.

AONs shall be periodically reviewed (at least at 5-year intervals) by the State lead agency, the FS Region/Area/IITF, and the SFSCC to assess whether AON amendments or updates are necessary. The results of reviews will be documented by the State lead agency. AONs should be amended as needed.

The State lead agency may amend the AON to make significant changes or minor adjustments. Significant changes include modifications to their FLP, changes to the FLA Eligibility Criteria, or to add or delete a FLA. These changes need to be made in consultation with the SFSCC and with public involvement. FLAs and project evaluation criteria shall be of a scale and detail to effectively focus delivery of the FLP.

Significant Amendments to an AON may address the following:

1. 1. Issues associated with maintaining the integrity of forestland and the proposed FLA specifically.
2. 2. Revision, if any, of the FLA Eligibility Criteria.
3. 3. Changes in policies or conditions that have occurred since the previous AON;
4. 4. The identification of proposed FLA(s) and conservation goals or objectives associated with that FLA (see Section V for detail on FLA identification).

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The Chief of the Forest Service, or designee, provides final approval of the Amendment of an AON authored by a State lead agency after consultation with SFSCC.

In addition, the State lead agency may complete minor AON amendments, such as FLA boundary adjustment or project prioritization process. These minor changes need to be coordinated with the SFSCC, and need review and approval by the appropriate FS Region/Area/IITF.

VIII. Multi-State Identification of Forest Legacy Areas

States are encouraged to cooperate in the identification of FLA that cross State or Tribal boundaries and to work together to coordinate acquisitions of lands or interests in lands that have complementary purposes.

States may elect to jointly use an existing or new multi-State or regional entity to identify FLAs or develop FLP projects that cross State boundaries. The entity must be a government-established organization, whose jurisdiction encompasses all or portions of the land area of the FLA States involved. However, program implementation is undertaken by the individual States (State Grant Option) or by the FS (Federal Option).

The entity conducting a multi-State identification of FLAs is responsible for:

- . • Obtaining approval from the appropriate States or Indian tribes for FLAs within their boundaries,
- . • Cooperating with appropriate SFSCCs,
- . • Obtaining public comments on the identification of FLAs, and
- . • Complying with all other requirements of these guidelines.

IX. Project Selection Process

The FS will conduct a project selection process to arrive at a prioritized national project list for consideration in the President’s budget for the upcoming fiscal year. The project selection process and calendar of due date milestones are developed in consultation with the State lead agencies and FS Region/Area/IITF and communicated by the FS Washington Office. The FS will ensure that national evaluation and prioritization criteria are communicated to the States and in a timely manner so that submitted projects adhere to strategic goals and objectives of FLP. Project selection steps are:

Step 1: Release Project Selection Calendar with Due Dates (See Appendix A for example) The project selection process and calendar of due date milestones are developed in consultation with the States and FS Regions/Area/IITF and communicated by the FS Washington Office.

Step 2: State Project Prioritization and Submission FLP project applications are accepted

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by the State lead agency as outlined in the State's AON. The SFSCC reviews and evaluates applications according to the criteria identified in the State's AON, authorizing statute, and other relevant direction and policy, and provides recommendations to the State lead agency. Projects approved and prioritized by the State lead agency are forwarded to the FS Region/Area/IITF for funding consideration. Only projects submitted through this process will be deemed eligible. Each State will prepare a list of projects and enter or update its list for submission to the FS via the Forest Legacy Information System or other means as requested.

- Step 3:** Forest Service Regional Review FS Regions/Area/IITF will review submitted projects considering State priorities and national criteria. The purpose of this review is to improve project viability, facilitate the national project selection process and advance the strategic outcomes of the FLP. FS Regions/Area/IITF will submit projects to the FS Washington Office for funding consideration.
- Step 4: National Review; Develop National Project List** The FS Washington Office will develop a prioritized national project list by convening a panel. There are 3 purposes of the panel; 1) assure that all projects meet Congressional and Administration direction; 2) assure that projects meet national program goals; and 3) develop a National List of ranked projects. The composition of the panel shall be developed annually in consultation between the State lead agencies and the FS, and will be representative of geographic regions. Project evaluation and ranking is based on the following national core criteria; project readiness will be considered as well as other evaluation considerations developed in consultation with State lead agencies and FS Regions/Area/IITF. The national core criteria are:
- . • Important – The public benefits gained from the protection and management of the property including environmental values, and the economic and social aspects;
 - . • Threatened – Conversion to nonforest uses is likely or imminent and will result in a loss of forest values and public benefits; and
 - . • Strategic – Fits with a larger conservation plan, strategy, and initiative and enhances previous conservation investments.

States newly entering FLP will be given a "New-State start-up" preference for an initial FLP project. This is a placeholder for planning purposes and does not guarantee project funding. In order to receive the New State start-up project funds the State must have an approved AON and the project must meet national core criteria and the State's evaluation criteria and be submitted within the fiscal year that the placeholder is approved by Congress.

- Step 5: Submit National FLP Project List to the Office of Management and Budget and to Congress**

Each fiscal year, the FS Washington Office will submit a project list to the

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Office of Management and Budget for funding consideration in the President's budget. Once the President's budget has been completed, the FS Washington Office will notify the appropriate House and Senate Committees and Subcommittees of the recommended projects for the upcoming Fiscal Year.

X. Program Fund Categories

Forest Legacy funds are allocated to one of three categories: Project Funds, Administration Funds, and AON Preparation Funds. FLP funds may not be used for monitoring and enforcement.

A. Project Funds Project funds are those used to directly purchase lands or interests in land joining the FLP. Project funds may be expended by the State lead agency or the FS, as applicable, to cover transaction costs, including but not limited to: appraisals and appraisal review, land surveys, closing costs, establishing baseline information, title work, purchase of title insurance, conservation easement drafting, and other real estate transaction expenses for those tracts. Project funds may also be expended to facilitate donations of land or interests in lands to a qualified and willing donee for FLP purposes, by paying for expenses directly related to the donation, including but not limited to, land surveys, conservation easement drafting, title work, and establishing baseline information. For an outright donation of a conservation easement or land, FLP program funds may not be used to pay for an appraisal. In the case of a partial donation of a conservation easement or land, an appraisal meeting Federal standards is required to determine the value of property. FLP funds may be used for appraisals on these partial donations. When Federal funds are used to purchase real property, including conservation easements, appraisal and acquisition work procedures must meet Federal standards.

B. Administration Funds Administrative funds are the portion of funds used for day-to-day program management at all levels. Administration funds may be used for a variety of activities, including FLP program administration, personnel and overhead, and all activities identified as eligible uses of project funds to prepare projects and potential projects. Forest Legacy funds for administration shall be kept to a minimum. As a goal, all attempts should be made to keep administration funds under 15 percent of the total funds appropriated.

C. AON Preparation Funds AON preparation funds may be made available to States to help defray the cost of preparing, or amending an AON.

XI. Process for Allocating Funds to Forest Service Regions/Area/IITF

Following passage of the annual appropriations bill, the FS Washington Office develops the Forest Legacy Program Direction and allocates funds to the FS Regions/Area/IITF for distribution. The allocation process differs for each fund category described below.

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A. Allocation of Project Funds Allocations to FS Regions/Area/IITF are based on the results of the national project selection process and the appropriations bill. Under the State grant option, FS Regions/Area/IITF will award grants to States for specific, identified projects.

B. Allocation of Administration Funds The FS Washington Office distributes administration funds to FS Regions/Area/IITF. Each FS Region/Area/IITF in consultation with the States requests these funds to meet their needs and the needs of the participating states in their Region/Area/IITF. Administration funds are also used by the FS Washington Office to fund program management functions. Administration funds will be granted to States under the State grant option separately from project funds.

C. Allocation of AON Preparation Funds The FS Washington Office distributes AON preparation funds to the States by way of FS Regions/Area/IITF. These funds are requested by FS Regions/Area/IITF to meet the needs of their States to develop new AONs or amendments.

XII. Redirection and Reprogramming of Funds

Due to the nature of real estate transactions, FLP projects may change in scope, cost or fail completely. These changes can result in unspent or excess funds for some projects while others may need additional funding to bring them to completion. In order to maximize the efficient and effective use of FLP project funding, the FS will either redirect or request reprogramming of funds. Redirection is a shift of funds from one congressionally approved project to one or more other congressionally approved project(s). Reprogramming is a shift of funds that exceeds an increase or decrease of 10% per project not to exceed \$500,000 to an existing project, or shifting of any amount of funds to a project not previously approved by Congress.

Regional Redirection Process FS Regions/Area/IITF may redirect up to an increase or decrease of 10% per project not to exceed \$200,000 of project funds that are excess or unspent from one project to one or more other Congressionally approved project(s) within the FS Region/Area/IITF which is underfunded and where there is a substantiated need (e.g. loss of other funding sources, appraisal documenting increased cost, etc.) to bring the project to completion. Project funds over \$200,000, or those that cannot be redirected by the FS Region/Area/IITF, will be released for the national process. FS Regions/Area/IITF will notify the FS Washington Office before a redirection takes place and report these actions periodically. All funds from failed projects will be released for the national process.

National Redirection Process The FS Washington Office, through consultation with FS Regions/Area/IITF, may redirect up to an increase or decrease of 10% per project not to exceed \$500,000 of project funds that are excess or unspent from one project to one or more congressionally approved project(s) which is underfunded and where there is a substantiated need (e.g. loss of other funding sources, appraisal documenting increased

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cost, etc.) to bring the project to completion. In addition, when funds have not been spent or contractually obligated within two years of receipt of funds, they revert to the FS Washington Office via the appropriate FS Region/Area/IITF. The FS Washington Office will:

1. 1. Assess the extent of unspent or returned funds on a periodic basis;
2. 2. Facilitate selection and funding of underfunded projects not addressed by the regional process or between FS Regions/Area/IITF; and
3. 3. Notify Appropriations Subcommittees of any redirection action taken by the FS FS Regions/Area/IITF or FS Washington Office.

National Reprogramming Process The FS Washington Office, through consultation with FS Regions/Area/IITF, may request reprogramming by the Appropriations Subcommittees of unspent or returned funds to a project that requires more than an increase or decrease of 10% per project not to exceed \$500,000 to complete. In addition, the FS Washington Office may request reprogramming by the Appropriations Subcommittees of unspent or returned funds to a project not previously approved by Congress. The FS Washington Office will:

1. 1. Determine the funds available for reprogramming on a periodic basis.
2. 2. Identify underfunded projects that cannot be addressed through the Regional Redirection Process and determine the priority for reprogramming.
3. 3. Recommend reprogramming to fund projects from the National Project List next in sequence in priority ranking to the extent practicable.
4. 4. Submit reprogramming requests to the Appropriations Subcommittees for approval.
5. 5. Allocate funds to projects approved for reprogramming.

XIII. FLP Cost Share Requirements

The CFAA directs that, to the extent practicable, the maximum Federal contribution for total program costs may not exceed 75 percent. To assure program-wide cost share goals are met, each project budget must include a minimum nonfederal contribution of 25 percent (See Appendix D for examples of cost share calculations). This nonfederal cost-share must meet Forest Legacy purposes. It may consist of: (1) the value of land, or interest in land, dedicated to the FLP that is not paid for by the Federal government; (2) nonfederal costs associated with program implementation; and (3) other nonfederal costs associated with a grant or other agreement that meets FLP purpose. The nonfederal cost-share must be documented, and in the case of a grant, must meet the timing, terms, and conditions of the grant. The cost-share can occur at any phase of the FLP including planning, developing future projects, acquisition, capital improvement, management, or administrative activities. When a grant is involved, the cost-share must occur within the life of a grant and meet all grant requirements. Federal requirements identify the grant period as beginning when the grant is formally awarded and ends after two years to ensure that the federal funds are spent promptly. However, a grant may receive a maximum extension to five years. Allowable costs shall be determined in accordance with the 7 CFR 3016, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," and any amendments to this regulation

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(See Appendix C for list of applicable Office of Management and Budget (OMB) Circulars and other regulations).

Donations of land or interests in land must be documented to count as part of the nonfederal cost-share. The title does not need to be transferred to the State or federal government in order for the donation to qualify as cost share. However, if in the future, the donated lands are conveyed or the rights or title are modified in a way that is inconsistent with the purposes of the FLP then the State must restore the cost share value dedicated in the grant agreement. The value of donations may be included as part of the nonfederal cost-share if all of the following are met:

1. 1. The donation contributes to the objectives and priorities of the State FLP as set forth in the AON;
2. All or part of the tract being donated must be within the boundaries of an FLA, and may include National Park, National Forest, National Wildlife Refuge, or other Federal land boundary, or within the boundaries of an area designated through an analogous State program with goals compatible with the FLP and be within an FLA;
3. The donor documents their desire that value of the interests may be used as cost share for the FLP project;
4. The donation of land or an interest in land must contain perpetual covenants to assure that the tract will be managed in a manner compatible with the goals for which the FLA was established;
5. The donee (holder of donated rights) is a unit of government or a non-profit conservation organization (land trust) that meets the eligibility requirements for holding a conservation easement established by the Internal Revenue Service and has as its purpose the management of lands or interests in land consistent with FLP purposes;
6. If the donation is in the form of a conservation easement then the deed needs to contain a provision that directs all of the easement holder's proceeds from a subsequent sale or exchange of interests in land be used in a manner consistent with the conservation purposes identified for the subject interests in lands;
7. The respective portion of the donation must not have been previously credited towards any Federal program's nonfederal cost share; and
8. The State lead agency approves the donation as contributing to the cost-share.

XIV. Acquisition of Lands or Interests in Lands

FLP acquisitions may be outright full fee purchases, or acquisition of development rights or other rights conveyed through a conservation easement. Except in the case of a full and complete donation of land or an interest in land, if any Federal funds are used in the acquisition of Forest Legacy tract the following shall apply:

1. Federal appraisal standards must be met, including appraisal review by a qualified Review Appraiser;
2. The landowner must be informed in writing of the market value and that sale of the property is strictly voluntary;
3. The landowner must be notified in writing that the property will NOT be purchased if negotiations do not result in amicable agreement;
4. Federal payment to the landowner for lands or interests in lands is not more than

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the market value as determined by an appraisal meeting Federal appraisal standards;

5. The title acquired must be free of encumbrances inconsistent with the purposes of the FLP. Title insurance may be secured for the full value of the encumbered property, but is not an alternative to an acceptable title; and

6. If relocation is involved the requirements in the Uniform Relocation Assistance and Real Estate Property Acquisition Policies Act of 1970 (PL 91-646 or 42 U.S.C. 4601) must be followed. The FS will be advised in advance of any acquisition involving relocation.

7. In the case of acquisition of interested in lands, the development of a Forest Stewardship Plan or multi-resource management plan that has been approved by the landowner and the State Forester or designee and Baseline Documentation Report shall be prepared prior to project closing (See Appendix J for sample content and references).

All FLP acquisitions of lands or interest in lands are perpetual and therefore run with the land. Although any remaining interests held by the landowner may be subsequently conveyed, future owners are still bound by the terms and conditions of the conservation easement. At the same time, future owners shall retain full control of the rights that are not acquired by the FLP, and shall be subject only to those restrictions that the present landowner has conveyed to the Federal, State, or local government.

Compatible nonforest land uses (cultivated farmland, pasture, grassland, shrubland, open water, and wetlands) are desirable land uses in many FLAs. FLP funds should not be used for any property not meeting the State's definition of forested land in the AON, unless there is a written plan scheduling reforestation or afforestation. Programs to conserve farms, ranches and similar land uses may be used in conjunction with the FLP to protect properties where there are mixed forest and compatible nonforest uses.

Conservation easements are required to contain language pertinent to the purpose of the FLP and a reversionary provision to ensure the conservation investment of FLP into the future (Example clause language are found in Appendix I). During the development of tract specific conservation easements, a determination will be made as to whether the acquisition of mineral rights, prohibition on reserved areas, or an exclusion of the area that does not comply with FLP, would be necessary in order to protect the other rights that are being considered for acquisition. In some situations, it may be impossible to protect environmentally important forest areas pursuant to the purpose of the FLP without acquiring the mineral rights.

The FLP conservation easement holder (Federal, State or local government) is responsible to assure that baseline documentation contains all the information necessary to monitor, manage and enforce the easement. Where the conservation easement is a tax-deductible gift, and the owner retains rights to the property, the Internal Revenue Service (IRS) holds the donor responsible for providing sufficient baseline data "to establish the condition of the property at the time of the gift." (See Treas. Reg. §1.170A-14(g)(5)(i)). However, this does not eliminate the FLP need for baseline documentation.

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Baseline documentation describes or depicts a tract of land and its attributes on the day it becomes restricted by an easement. This documentation is required on all FLP tracts and is completed prior to project closing. Documentation of the property should include a map of the area drawn to scale showing all existing man-made improvements or incursions such as roads, buildings, fences or gravel pits; an aerial photograph of the property taken as close to the date the property is restricted as possible; and on-site photographs, especially of significant features. The above should be accompanied by narrative descriptions of tract attributes and other pertinent information.

States and landowners are encouraged to display the official FLP signs on the FLP property using the signs in accordance with Appendix K. The posting of FLP tracts helps promote public awareness, recognition and support for the program. Landowner permission should be secured before posting any signs. Costs associated with sign posting can be covered by FLP project or administration grants or States may use such expenses as FLP cost share. Signs should be inspected during the annual monitoring of the FLP tract and repaired when in poor condition.

FLP sign art and program logos may be used by FLP partners for items that contribute to the purpose of awareness (e.g. brochures, workshops, outreach efforts, posters, FLP information packets, web sites etc.)

XV. Appraisal and Appraisal Review

The FLP policy on appraisal is that all FLP acquisition of land or interests in land using Federal funds must comply with Federal appraisal standards contained in the publication entitled "Uniform Appraisal Standards for Federal Land Acquisitions: Interagency Land Acquisition Conference, 2000," as amended or updated. Appraisals and appraisal reviews may be conducted by any qualified appraiser meeting the minimum standards outlined in Appendix H.

The FLP will ensure high quality appraisal service and accountability to the program by:

- Annual planning and coordination of appraisal work to allow for efficient allocation of resources.

□.• Requiring checks and balances:

- a. States will ensure that qualified appraisers trained and competent in appraisal, appraisal review and knowledgeable of Federal standards will be used. The State may use State, contract or Federal appraisal or review services to meet this requirement.
- b. States or the FS will review contract appraiser qualifications as stated in Appendix H before they are employed to conduct a FLP project appraisal or review.
- c. The appraiser and identified review appraiser will engage in an initial consultation before the project appraisal takes place. The review appraiser will develop project specific appraisal instructions for the appraiser as a result of this consultation.
- d. The FS will conduct spot checks of appraisal reviews to ensure quality and accuracy.

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e. Forest Legacy funds can only be used to purchase lands and interests in land after the appraisal review confirms that the appraisal meets the *Uniform Appraisal Standards for Federal Land Acquisitions*. It is recommended that an offer not be made until the appraisal review is approved.

XVI. Conservation Easement Monitoring, Management, Record-Keeping & Enforcement

The governmental entity holding title to interests in land acquired under the FLP shall monitor and manage those interests in perpetuity. The holder may delegate or assign monitoring, management, and enforcement responsibilities over lands and interests in lands acquired under the FLP only to other Federal agencies or State or local government entities. Such delegation or assignment of responsibility shall be documented by a written agreement. The governmental entity responsible for monitoring, management and enforcement of the conservation easement may in turn delegate or assign management and monitoring authority to other parties, to include land trusts, conservation groups, and other governmental entities. Such delegation or assignment of authority shall be adequately documented and the FS shall be notified. The FS shall approve agreements involving any interests in lands held by the Federal Government prior to such delegation or assignment. Once interests in lands are acquired, the State lead agency, FS, and others as appropriate, may negotiate tract-specific Memorandums of Understanding (MOU) as necessary to specify management and monitoring responsibilities for the interests in lands.

Optimal management and monitoring of tracts in FLAs is based upon partnerships between landowners, private non-profit organizations owning or managing lands, and State and Federal officials. Land trusts and other private organizations will continue to manage and monitor their own easements and lands within designated FLAs, and while they may not manage government-owned interests in lands under the FLP, they may cooperate with or contract for monitoring and implement specific management activities. Management of federally owned interests in lands is reserved to the FS, but may be assigned to State or local governments, or another Federal agency through mutual agreement. Although delegable, enforcement actions for easements will generally be conducted by the easement holder, i.e., the State or the Federal Government.

Monitoring FLP conservation easements shall occur periodically, but not less than annually. Monitoring consists of visual inspection of the property, documented by a written report to explain the condition of the property at time of inspection. Any material departure from the baseline documentation report or Forest Stewardship Plan should be noted. The easement holder should immediately address any violation of the conservation easement with the landowner. The landowner should have the opportunity to correct the breach. After a reasonable time period (e.g. 30 days), if the breach is not corrected, enforcement action may be taken, including but not limited to, legal means. The unit of government holding the conservation easement has the initial responsibility to enforce the conservation easement. See Appendix G, Real Estate Record Keeping for suggestions on what information should be kept.

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The State or easement holder shall promptly notify any future FLP tract owner of the FLP and the origin and requirements of the conservation easement.

The Forest Stewardship Plans covering the tract shall be reviewed periodically and updated as needed. If there is a change in land ownership, then the Forest Stewardship Plan needs to be reviewed, and updated as needed.

XVII. Landowner Participation

Landowner participation in the program is voluntary and consists of two elements:

1. Conveyance of lands and interests in lands to achieve the purpose of the FLP;
2. Preparation and periodic updates of a Forest Stewardship Plan or a multi-resource management plan. The landowner and the State Forester or designee must approve the plan prior to signing the acquisition of the easement. The plan shall include provisions to meet land conservation objectives of the FLP. The plan shall be kept current and updated as needed. Modifications of the plan must be agreed to by the State lead agency. A plan is not needed if the lands are purchased in fee. (See Appendix F for sample content of a Forest Stewardship Plan)

Landowners may submit an application and property information (See Appendix E) to the State lead agency to enroll their land or interests in lands in the FLP according to the process described in the AON. All owners of eligible forestlands within the designated FLA, and meeting the minimum Eligibility Criteria or other application requirements described in the AON, are eligible to submit an application.

For a landowner to participate in the program, it is not required that their tracts be completely forested. (see definition of "Nonforest Uses" and "Reserved Areas") However, priority will generally be given to tracts that are currently forested or are identified to be forested in the landowner Forest Stewardship Plan or multi-resource management plan.

The FLP respects the rights of private property holders. Under no circumstances shall the right of eminent domain be used for the unwilling "taking" of any private property rights. Traditional forest uses such as forest management activities, including timber management, and outdoor recreation opportunities are deemed consistent with purposes of the FLP and are encouraged on FLP tracts when consistent with the State's AON and the conservation purposes for FLP tract acquisition.

The FLP adheres to language contained in Section 14 of the CFAA, Statement of Limitation: "This Act shall not authorize the Federal Government to regulate the use of private land or to deprive owners of land of their rights to property or to income from the sale of property, unless such property rights are voluntarily conveyed or limited by contract or other agreement. This Act does not diminish in any way the rights and responsibilities of the States and political subdivisions of States." Purchase or donation

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of rights does not relieve landowners of regulations that would otherwise apply. The FS has no jurisdiction to make tax determinations or render advice as to the tax implications of transactions. Since tax implications differ from person to person, landowners should be encouraged to seek independent counsel from local assessors, tax lawyers, or accountants.

XVIII. Land Trust Participation

Land trusts are nonprofit organizations that protect land by working with landowners wishing to donate or sell fee title or conservation easements to maintain conservation values associated with the land. Land trusts can have an important role to play in the FLP. The following considerations apply to land transactions between the Federal Government/States and land trusts:

1. Land trusts cannot execute contracts for acquisition of interests in lands on behalf of the Federal /State Government. Land trusts may work as intermediaries for eventual Federal/State acquisition, but without an accepted land purchase option and contract with the FS there is no guarantee of Federal acquisition. No pass-through transactions shall be done without prior consultation with the FS/State.
2. With approval of the State lead agency, the FS, the land trust or the donating landowner, lands and interests in lands acquired by land trusts (pursuant to Final Guidelines Part 1, Section XIII) may be counted toward the nonfederal cost-share contribution, provided that the interests in lands permanently contribute to the FLP.
3. If a land trust proposes a pass-through transaction to the FLP it must assure that terms and conditions in the deed or conservation easement are reviewed and approved in advance by the State lead agency and/or the FS.
4. The monitoring of easements within FLAs may be performed by land trusts in accordance with the umbrella MOU for the FLP in that State and individual MOUs for specific tracts established between the State and the land trust organization.
5. Other appropriate and beneficial roles of land trusts in relation to the FLP may include: participation on the SFSCC; recruitment and facilitation of FLP projects; buyer of tracts or easements of proposed, but unfunded FLP projects; facilitators of local FLP efforts; and performing tract monitoring and management activities.

PART 2 - STATE GRANT PROGRAM

The State lead agency elects the State grant option of the FLP, in writing, to the appropriate FS Region/Area/IITF.

When a State elects the State grant option, all FLP acquisitions shall be transacted by the State with title vested in the State or a unit of State or local government. There are two exceptions:

1. Donations where the donor may wish to make a donation to a land trust, local, or Federal Government and the donee agrees to accept the donation, and to manage the

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lands or interests in lands in perpetuity for FLP purposes; and

2. At the request of the State and at the discretion of the FS, the FS may acquire individual tracts or multiple tracts within a specified FLA, with title vested in the

U.S. in accordance with Part 3 of these guidelines.

I. Grants

If a State elects the optional State grant option, the FS will provide a Federal grant to the State to carry out the FLP, including the acquisition by the State of lands and interests in lands. Grants must be consistent with the uniform administrative requirements established in 7 CFR 3016. States will generally be reimbursed for costs incurred with cash advances limited to the minimum amounts needed and timed to be in accord only with the actual, immediate cash requirements of the State in carrying out the FLP. The timing and amount of cash advances shall be as close as is administratively feasible to the actual cash outlay by the State for direct program costs and the proportionate share of any allowable indirect costs.

A. Conditions of the Grant

1. States must submit annual performance and financial status reports. A final performance report and financial status report are required prior to close out of the grant.
2. Funds appropriated for the FLP shall not be included in consolidated-payment grants made under authority of Section 12 of the CFAA.
3. The State shall maintain current and complete financial records in accordance with requirements contained in the latest Federal Aid Manual and OMB Circular (See Appendix C).

B. Eligible Activities The following activities are eligible uses of funds granted to States for the FLP; however, in most cases costs incurred prior to issuance of the grant cannot be reimbursed:

1. Purchase of lands or interests in lands from willing sellers for inclusion in the FLP;
2. Facilitation of donations of lands or interests in lands to a qualified and willing donee for FLP purposes;
3. Program administration expenses limited to indirect costs and direct acquisition related expenses for lands and interests in lands acquired under Forest Legacy authority;
4. Establishment and documentation of baseline conditions and development of a Forest Stewardship Plan for a conservation easement; and
5. AON Planning and amendment.

The following uses of Forest Legacy funds are not allowed as part of a State grant:

1. Management of acquired lands or interests in lands including, monitoring of conservation easements,
2. Enforcement actions, and

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3. Payment for appraisals of donated property when the donation represents the full and total value.

C. Availability of Funds Project funds for any fiscal year shall be available to the State for two years from the time they are obligated in a FS grant to the State in order to insure that Federal funds are spent promptly to acquire FLP projects. However, a grant may have a maximum duration of five (5) years to allow for nonfederal cost sharing to occur. During the 5-year life of the grant, it can be amended annually, as needed, and funds from a new fiscal year added to the grant, consistent with the requirement that the funds be expended within two years of the time of obligation. In no case can funds be obligated or expended beyond the 5-year life of the grant.

II. Acquisition of Lands and Interests in Lands by States

All Forest Legacy acquisitions including the acquisition of lands or interests in land shall be made in accordance with Federal appraisal and acquisition standards and procedures. The interests in land acquired for Forest Legacy shall be adequate for Forest Legacy purposes and be perpetual. Title to such lands or interests in lands will be vested in the State or unit of State government. These lands or interests in lands will be managed and administered for goals consistent with Forest Legacy conservation purposes by State agencies or their assigns. The State agencies are responsible for all monitoring and management of conservation easements and management of fee simple properties.

Lands and interests in land located within a FLA and simultaneously within other Federal boundaries (e.g. national forest, national park, or national wildlife refuge) are eligible for the FLP provided that the responsible Federal agency concurs with the FLP State acquisition. If a State has passed legislation that extinguishes claims to or restrictions on real property, the State shall use all available authorities, including that of acting as an agent of the U.S., to achieve the purposes of section 7(K)(2) of the CFAA.

III. Reversion of Funds for Forest Legacy Inconsistency

In the event it is determined, by the State lead agency, that it is no longer desirable to hold lands or interests in lands acquired with Federal funding and those lands are conveyed, exchanged, or otherwise disposed of, after providing notice to the FS, the State shall:

1. Reimburse the FS for the current market value in proportion to the original Federal investment; (said reimbursements to be used to further the purposes of the FLP);
or
2. Exchange for other FLP eligible lands or interests in lands of at least equal market value and of reasonably equivalent location, with public purposes that equal or exceed those of the disposed tract, with FS approval.

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Items 1 and 2 identified above must be included in deeds or conservation easements of all FLP tracts as well as in the FS grant to the State. Appendix I includes suggested language for conservation easements and deeds.

PART 3 - FEDERAL ACQUISITION PROGRAM GUIDELINES

I. Federal Acquisition Process

In the furtherance of the purposes of the FLP, the State lead agency with involvement of the SFSCC and the FS will review property owner applications, prioritize tracts, obtain State approval, and submit properties to the appropriate FS Region/Area/IITF for funding. Upon approval for funding, the FS will proceed to acquire from willing sellers conservation easements and/or other interests in land including fee acquisition.

Federal Acquisition Procedures must be followed when Federal funds are used to complete an acquisition of land or interests in land using FLP authority. They are:

1. Federal appraisal standards must be met;
2. The landowner must be informed of the market value and that sale of the property is strictly voluntary;
3. The landowner must be notified in writing that the property will NOT be purchased if negotiations do not result in an amicable agreement;
4. Federal payment to the landowner for lands or interests in lands is not more than the market value determined under #1;
5. Assure title is free and unencumbered relative to the purposes of the FLP; and
6. If relocation is involved the requirements in PL 91-646 (42 U.S.C. 4601) must be followed and the FS must advise the landowner prior to the acquisition.

Certain lands are not eligible for the Federal ownership option under FLP authority because other authorities and funding sources are available for acquisition of lands or interests in lands within these federally established areas. These include lands or interests in lands located within National Forests, National Parks, National Wildlife Refuges, or other Federal Government boundaries. Proximity to Federal lands or the inclusion of Federal lands within a proposed FLA does not disqualify an area for program eligibility.

Federal laws governing public lands do not apply to private property rights not acquired by the Federal Government from willing private landowners. Interests in lands retained by private landowners, not conveyed to the Federal Government under the FLP, are subject to the same requirements of the Endangered Species Act (ESA) that existed prior to their participation in the FLP. Conveyance of interests in lands to the Federal Government neither enhances nor diminishes the landowner's responsibility under the ESA. Any interests in lands acquired by the Federal Government under the FLP shall be subject to the same requirements of the ESA as are other Federal lands.

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II. Memorandum of Understanding (MOU) for Coordination of the FLP

An MOU will be used to coordinate the FLP where Federal acquisition option resulting in Federal ownership of FLP acquisitions occurs. The MOU will define and facilitate partnerships between the State lead agency, FS, and other participating entities in implementing the program, acquiring interests in lands, and sharing the costs of the program. The MOU shall determine how costs are shared between parties, including administrative, management, monitoring, and capital improvement expenses. The terms of a MOU will determine which party is responsible for costs incurred following the project's five-year cost-share write off period.

If individual Forest Legacy tract-MOUs are needed, they become an addendum to the State level "umbrella" MOU. The umbrella MOU between the State lead agency and the FS shall be developed following the Secretary's approval of the State's AON and the establishment of the State's FLP.

The FS/State MOU is for the purpose of specifying roles and responsibilities for implementing the program, and may address the following items:

1. Costs and Funding:

- ☐a. Identify direct and indirect costs expected to be incurred in establishing the FLP, and acquiring and administering interests in lands during the first five years of the program. Revise or renew these cost estimates as appropriate.
- ☐b. Identify and propose sources of cost-share matches.

2. Planning:

- ☐a. Document the amount of work required to complete the AON and identification of FLAs.
- ☐b. Define a process for revising existing landowner Forest Stewardship Plans, or multi-resource forest management plans.
- ☐c. Identify how specific tract acquisition needs and priorities shall be established by the State.

3. Acquisition:

- ☐a. Identify who is responsible for title work, appraisals, surveys, and similar pre-acquisition work.
- ☐b. Define a process for determining the value of donated interests in lands.

4. Management:

- ☐a. Define responsibilities for management of interests in lands acquired or dedicated to the program.
- ☐b. Identify possible activities needed to enhance, restore, or maintain resources to meet the intent of the program and general responsibilities in carrying out such activities.

5. Administration:

- ☐a. Estimate the staff-work required to implement the Program.

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- ☐b. Define responsibilities for processing applications to the FLP.
- ☐c. Establish procedures for monitoring and enforcement the terms of reserved interest deeds and easements and identify who will be responsible.
- ☐d. Identify responsibilities for periodic reports summarizing the achievement of FLP goals in the State.

III. Payment in Lieu of Taxes (PILT)

Where the Federal Government under the FLP acquires lands in fee, the Federal Government will pay PILT to the local taxing authority. No PILT will be paid on conservation easements.

IV. Transition to State Grant Option Program

If a State elects the State Grant Option, and there are active cases being pursued by the FS, all parties (FS, State, and landowner) may agree to transfer the case to the State. If agreement to transfer is reached, then the value of the lands or interests in lands comprising the project may be transferred to the State by a FS grant. To facilitate projects transferred to the State, the FS may provide the State with copies of any appraisals, appraisal reviews, title reports, option contracts and other pre-acquisition materials for lands that have been under negotiation by the FS.

APPENDIX A- Example of a Project Selection Calendar

This flowchart outlines the basic FLP project selection process.

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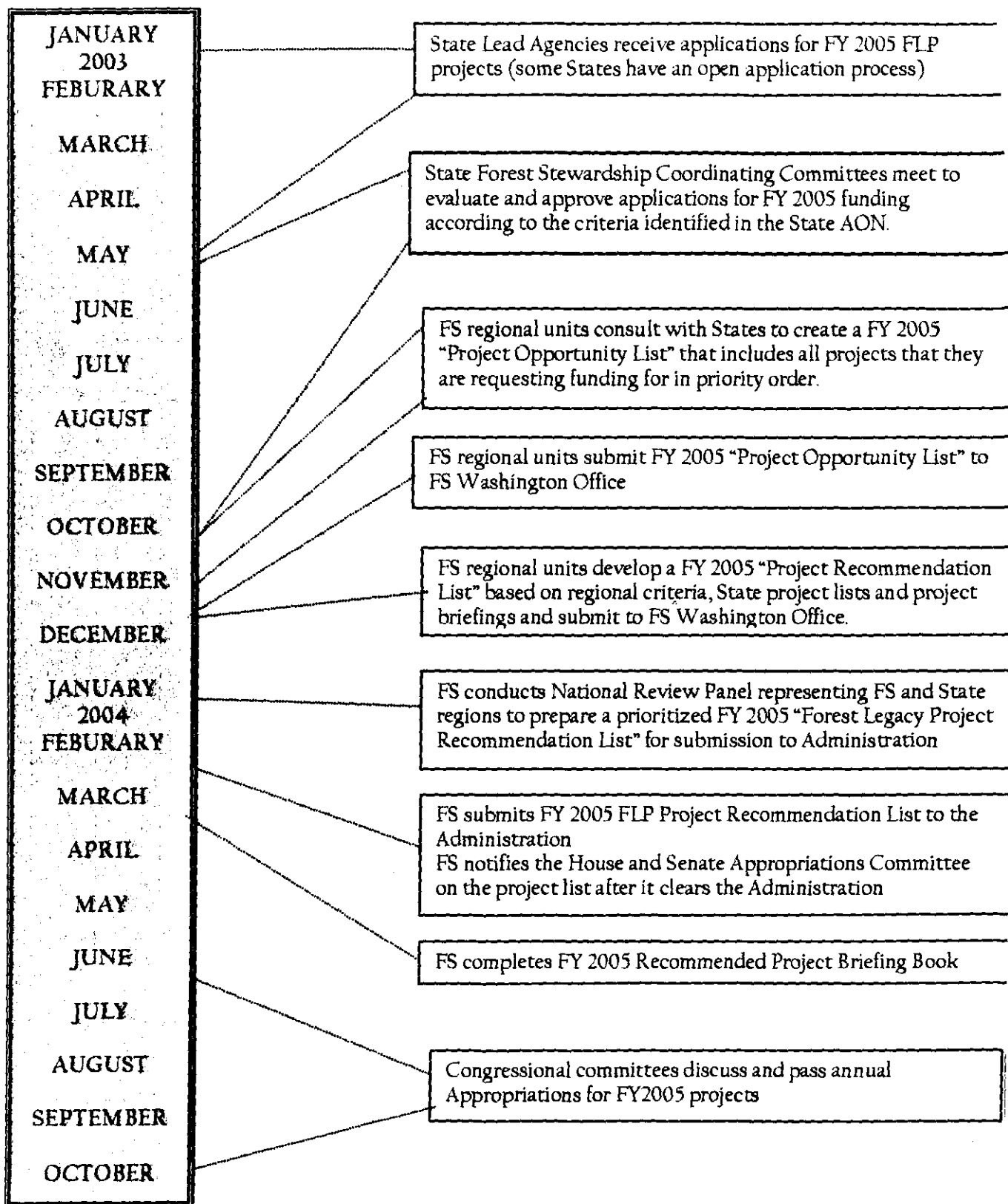
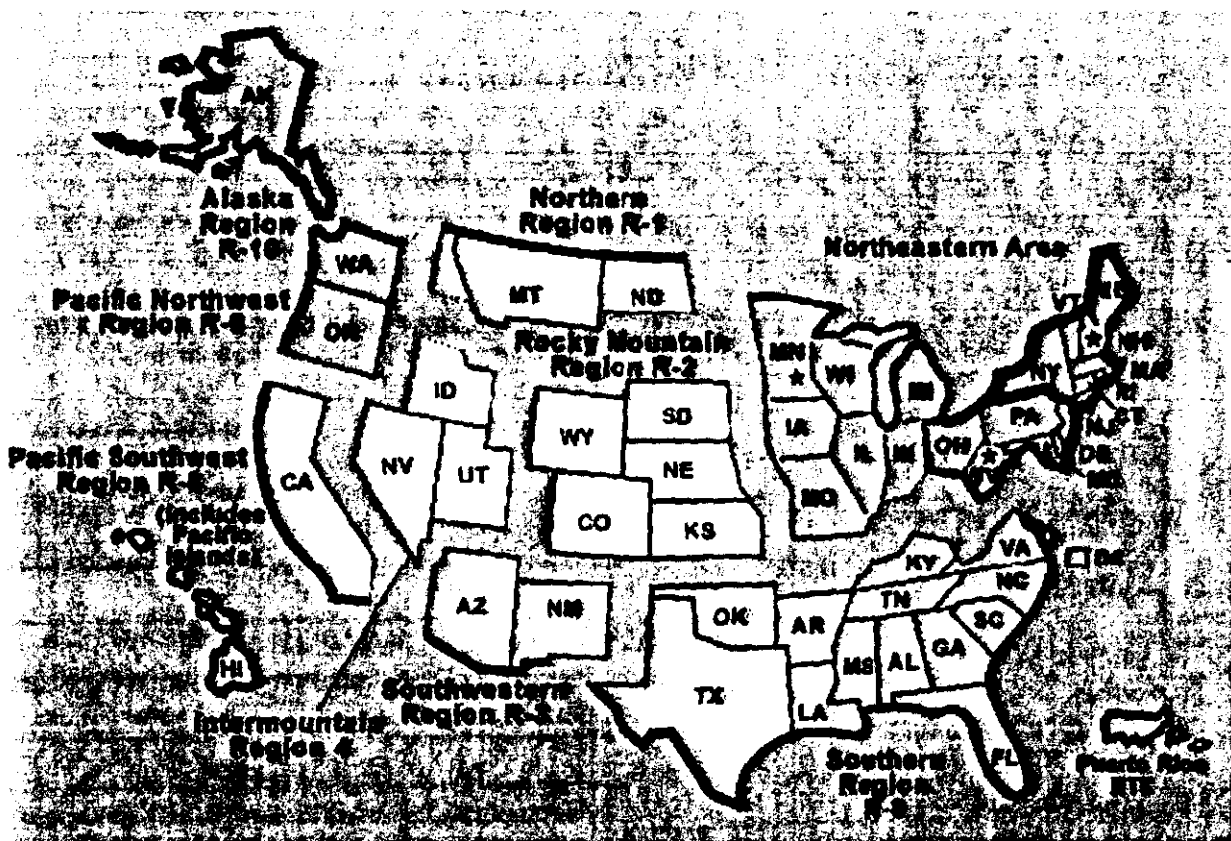


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APPENDIX B- Map of the Forest Service Regions/Area/IITF



National Association of State Foresters' (NASF) Geographic Regions:

North: All States within the Forest Service's Northeastern Area.

South: All States within the Forest Service's Southern Region (R-8) and International Institute of Tropical Forestry (IITF).

West: All States within the Forest Service's Northern (R-1); Rocky Mountain (R-2); Southwestern (R-3); Intermountain (R-4); Pacific Southwest (R-5); Pacific Northwest (R-6); and Alaska (R-10) Regions.

APPENDIX C- Office of Management and Budget (OMB) Circulars and Other Regulations

Any award of Federal financial assistance under these guidelines will be subject to the following or its most recent update:

1. OMB Circular A-102 (10/7/1994, amended 8/29/1997), "Grants and Cooperative Agreements with State and Local Governments"
2. OMB Circular A-87 (5/4/1995, amended 8/29/1997), "Cost Principles for State, Local, and Tribal Governments" as implemented by Departmental Regulation 7 CFR 3016, "Uniform Administrative Requirements for Grants and Cooperative Agreements to

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State and Local Governments"

3. OMB Circular A-110 (11/19/1993, amended 09/30/1999), "Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations"
4. OMB Circular A-122 (6/1/1998), "Cost Principles for Non-Profit Organizations"
5. OMB Circular A-133 (06/24/1997), "Audits of States, Local Governments, and Non-Profit Organizations" as implemented by Departmental Regulation 7 CFR 3050, "Audits of State and Local Governments" OMB Circular A-89 (8/17/1984), "Catalog of Federal Domestic Assistance"
6. 7 CFR 3017, Government Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants), and
7. 7 CFR 3018, New Restrictions on Lobbying.
8. 7 CFR 3019, Uniform administration requirements (Higher education, hospitals, and non-profit organizations"

APPENDIX D- Examples of Cost Share Calculations

Equation for Calculating Cost Share Requirement

(Federal FLP Share) X (0.333) = the minimum Non-Federal Contribution

OR

(Total Project Costs) X (0.75) = the maximum Federal Contribution

Principals to Guide Calculating the Cost-Share Requirements

- To calculate the cost share requirement, the Program Manager should use the Federal FLP contribution, and not the total project costs.
- The cost share requirement should be at least 33.3% of the total Federal FLP contribution towards the project, which will equal at least 25% of the total FLP project (Federal FLP contribution plus cost share).
- The Federal contribution (Forest Service's FLP plus all other Federal contributions) cannot exceed 75% of the total project costs (all cost requirements to complete the project, including Federal and non-Federal contributions).
- The non-Federal cost share portion cannot be used as cost share for another Federal program that also requires a cost share.

Example 1- The FLP is going protect Jane Smith's 3,000 acres tract. The total cost of protecting that land is \$1 million.

<i>Total Project Costs</i>	<i>Federal FLP Contribution</i>	<i>Non-Federal FLP Contribution</i>	<i>Other Federal Contribution</i>	<i>Other non-Federal Contribution</i>
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\$1,000,000	\$750,000	\$250,000	\$0	\$0
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- Federal contribution cannot exceed \$750,000; therefore, the Federal contribution is not greater than 75% of the total project costs.
- The non-Federal cost share requirement is at least \$250,000; therefore, FLP funds are adequately cost shared.

Example 2- John Doe Ranch is planning to conserve 6,500 acres of land. The total cost of protecting the land is \$4 million. The Federal contribution, through FLP, will be \$1,000,000, and the non-Federal contributors will provide \$3,000,000, which includes a cost-share component for the FLP.

<i>Total Project Costs</i>	<i>Federal FLP Contribution</i>	<i>Non-Federal FLP Contribution</i>	<i>Other Federal Contribution</i>	<i>Other non-Federal Contribution</i>
\$4,000,000	\$1,000,000	\$333,000	\$0	\$2,667,000

- Federal contribution cannot exceed \$3,000,000; therefore, the Federal contribution is not greater than 75% of the total project costs.
- The non-Federal cost share requirement is at least \$333,000; therefore, FLP funds are adequately cost shared.

Example 3- ABC Tree Company is planning to conserve 8,300 acres of land. Both the Forest Service's FLP and the U.S. Fish and Wildlife Service (FWS) are contributing funds toward the project. Non-Federal money has been secured to cover the non-Federal cost share requirements for the FLP and FWS requirements, as well as to pay for additional project costs.

<i>Total Project Costs</i>	<i>Federal FLP Contribution</i>	<i>Non-Federal FLP Contribution</i>	<i>Other Federal Contribution</i>	<i>Other non-Federal Contribution</i>
\$4,000,000	\$1,000,000	\$333,000	\$1,000,000	\$1,667,000

- Federal contribution cannot exceed \$3,000,000; therefore, the Federal contribution is not greater than 75% of the total project costs.
- The non-Federal cost share requirement is at least \$333,000; therefore, FLP funds are adequately cost shared.
- FLP cost share component cannot be the same as the FWS cost share component.

APPENDIX E- Information to Facilitate Landowner Participation

Landowners who wish to participate in the program may be asked to provide the following information.

1. Name, address and phone number of applicant landowner.
2. All other owners of record for this tract, and their addresses.
3. Name, address and phone number of authorized agent representing landowner(s) if applicable.
4. Location of property.
5. If the landowner intends to reserve rights to forestry uses or other resource

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management activities, a copy or reference to the State approved landowner Forest Stewardship Plan or multi-resource management plan.

6. List of the significant scenic, natural, recreational, wildlife, timber and other resource values contained on the property.
7. Identification of all dams, dumps or waste disposal sites on the property.
8. Signed statement giving the FS and State lead agency permission to enter the property for review and appraisal purposes.
9. Legal description.
10. List any encumbrances or liens existing on the property including, but not limited to contracts, leases, or outstanding rights not of record.
11. Copy of plat or survey map of the property, if existing. If only a portion of the property is being offered, identify it on a plat showing the portion offered in the context of the entire tract.
12. Tract acreage and total number of acres of forests and cleared/open land.
13. List of existing permanent improvements on the tract, including houses, barns, lakes, ponds, dams, wells, roads, and other structures, and total number of acres occupied by improvements.

APPENDIX F- Sample Content of a Forest Stewardship Plan

Below is information from the Forest Stewardship Program's *National Standards and Guidelines*. Please also refer to the Forest Stewardship Program's *Planning for Forest Stewardship: A Desk Guide* as well as States' Statewide Forest Stewardship Plans for additional information on Forest Stewardship Plans.

Landowner Forest Stewardship Plans must:

- be prepared or verified, as meeting the minimum standards of a forest stewardship plan, by a professional resource manager.
- identify and describe actions to protect, manage, maintain and enhance relevant resources listed in the law (soil, water, range, aesthetic quality, recreation, timber, water, and fish and wildlife) in a manner compatible with landowner objectives.
- be approved by the State Forester or a representative of the State Forester.
- involve the landowner in the plan development by setting clear objectives and should understand clearly the completed plan.

A well prepared plan will:

- Clearly state landowner objectives.
- Have a cover page.
- Provide for authorship and/or signature lines within the document.

The plan preparer should consider and evaluate resource elements present and include a brief description of those that are applicable and their importance to the ownership.

Resource elements to be considered are:

- Soil Interpretations
- Water
- Range

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- . • Aesthetic Quality
- . • Recreation
- . • Timber
- . • Fish
- . • Wildlife
- . • Forest Health
- . • Archeological, Cultural and Historical Sites
- . • Wetlands
- . • Threatened and Endangered Species

Management recommendations, or where appropriate, alternative strategies should be provided for those resource elements described. Prescriptions or treatments should be integrated and stand or site specific. An ownership map drawn to scale, or photo, to include vegetation cover types, stream and pond location with a legend will enable the landowner to implement the plan.

Landowners' understanding may be improved by including activity summaries and appendices. Appendices might include:

- . • Description of assistance available and incentive programs
- . • Educational materials
- . • A glossary of terms
- . • An explanation of applicable Federal, State and /or county regulatory programs, especially as they apply to:

- a. Archeological, cultural and historical sites.
- b. Wetlands.
- c. Threatened and Endangered Species.

These last three items are covered by legislation other than the Cooperative Forestry Assistance Act of 1978, as amended by title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (16 U.S.C. 2101, et seq.), but must be considered for Federally funded programs.

The professional resource manager should discuss the Forest Stewardship Plan with the landowner, following completion, to assure understanding.

APPENDIX G- Real Estate Record Keeping

Since Forest Legacy acquisitions are perpetual, record keeping is important. Each State shall maintain permanent records for all Forest Legacy properties. The following information is recommended to be maintained by the conservation easement holder:

- A. Landowner information (name, address, phone)
- B. Nomination form (including notification to landowner that property will not be purchased if negotiations do not result in amicable agreement)
- C. Landowner Inspection Consent Agreement
- D. Baseline documentation

EXHIBIT "B"

- E. Option agreement
- F. Deed of Conservation Agreement
- G. Additional warranty deeds, covenants, restrictions
- H. Title Insurance Policy
- I. Appraisal
- J. Appraisal review
- K. Forest Stewardship Plan or equivalent
- L. Notification of county or local government
- M. Closing statement
- N. Copies of check or documentation of EFT or other form of payment
- O. Copies of grant reimbursement or expenditure

The following items should also be maintained as part of the record:

- 1. Landowner correspondence
- 2. Evaluation criteria
- 3. Tracking/documentation of negotiation steps
- 4. State Forest Stewardship Coordinating Committee recommendation
- 5. Press release
- 6. Monitoring records/history

APPENDIX H- Required Qualifications of an Appraiser or Review Appraiser

- A. Appraiser - In order to be a qualified appraiser for purposes of FLP appraisals, an individual must be:
 - 1. a Federal land acquisition agency staff appraiser who
 - a. is certified as a general appraiser in compliance with OMB Bulletin 92-06, and
 - b. has completed training in application of the December 2000 edition of *Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA)** approved for appraiser continuing education credit in the State where the appraiser is certified, or
 - 2. a nonfederal staff or fee appraiser who
 - a. is certified as a general appraiser in the state where the appraised property is located, or can obtain reciprocity or a temporary practice permit in the state where the appraised property is located, and
 - b. has, within the past 10 years, completed at least the minimum classroom hours of non-duplicative education prescribed for the certified general real property appraiser classification by the Appraisal Standards Board of The Appraisal Foundation, and
 - c. has completed at least 12 self-contained or summary appraisal reports of properties similar in scope and complexity to the appraised property in the preceding three years, and
 - d. has completed training in application of the December 2000 edition of *Uniform Appraisal Standards for Federal Land Acquisitions* approved for appraiser continuing education credit in the state where the appraiser is certified.

EXHIBIT "B"

The qualified appraiser shall prepare an appraisal report in compliance with the *Uniform Appraisal Standards for Federal Land Acquisitions* and supplemental written appraisal instructions issued by the client. Federal land acquisition agencies are the member agencies of the Interagency Land Acquisition Conference.

B. Review Appraiser- In order to be a qualified review appraiser for purposes of FLP appraisals, an individual must be:

1. a Federal land acquisition agency staff appraiser who
 - a. is certified as a general appraiser in compliance with OMB Bulletin 92-06, and
 - b. holds specific delegated authority to review and approve or recommend appraisals for agency use, and
 - c. has completed training in application of the December 2000 edition of UASFLA* approved for appraiser continuing education credit in the State where the reviewer is certified, or
2. a nonfederal staff or fee appraiser who
 - a. is certified as a general appraiser in the State where the appraised property is located, or can obtain reciprocity or a temporary practice permit in the state where the appraised property is located, and
 - b. has, within the past 10 years, completed at least the minimum classroom hours of non-duplicative education prescribed for the certified general real property appraiser classification by the Appraisal Standards Board of The Appraisal Foundation and at least 32 classroom hours of approved training in appraisal review, or otherwise demonstrates competency in appraisal review in compliance with the Competency Rule of the *Uniform Standards of Professional Appraisal Practice (USPAP)*, and
 - c. has completed at least 12 self-contained or summary appraisal reports of properties similar to the appraised property in the preceding three years or at least 12 technical appraisal review reports for appraisal reports of properties similar in scope and complexity to the appraised property in the preceding three years, and
 - d. has completed training in application of the December 2000 edition of *Uniform Appraisal Standards for Federal Land Acquisitions* approved for appraiser continuing education credit in the state where the reviewer is certified.

The qualified review appraiser shall prepare a technical appraisal review report that includes a determination of whether the appraisal report under review complies with the *Uniform Appraisal Standards for Federal Land Acquisitions*.

Federal land acquisition agencies are the member agencies of the Interagency Land Acquisition Conference.

*The seminar, *Federal Land Exchanges and Acquisitions: Appraisal Issues and Applications*, offered by the American Society of Farm Managers and Rural Appraisers and the Appraisal Institute is the only acceptable substitute for UASFLA training.

EXHIBIT "B"

APPENDIX I- Requirements and Suggestions for Conservation Easements and Deeds

The Purpose and Authority and Reversion clauses are required in all FLP easements and deeds. Below are examples of language that States have used to meet that requirement:

A. Purpose and Authority Clause

Example 1:

WHEREAS, the Conservation values of the Property are consistent with the goals of the Forest Legacy Program and the establishment of this conservation easement will provide public benefits by:

- preventing future conversions of forest land and forest resources; protecting and enhancing water quality and water supplies; protecting wildlife habitat and maintaining
- habitat connectivity and related values to ensure biodiversity; protecting riparian area;
- maintaining and restoring natural ecosystem functions; and maintaining forest sustainability and the cultural and economic vitality of rural communities.

WHEREAS, the specific Conservation Values of the Property are documented in an inventory of relevant features of the Property. The data and explanatory text are presented in the Baseline Documentation Report, dates _____, which consists of reports, maps, photographs, and other documentation that the parties agree to provide.

This Easement acquisition is authorized by the Cooperative Forestry Assistance Act of 1978, as amended by section 1217 of the Food, Agricultural, Conservation and Trade Act of 1990 (104 Stat. 3528; 16 U.S.C. Section 2103c).

Example 2:

The purpose of this easement is to effect the Forest Legacy Program in accordance with the provisions of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (16 U.S.C. – 2103c) as amended, on the herein described land, which purposes include protecting environmentally important forest areas that are threatened by conversion to non-forest uses and for promoting forest land protection and other conservation opportunities. The purposes also include the protection and preservation of important scenic, cultural, fish, wildlife and recreational resources, riparian areas, and other ecological values, and to ensure that the Property is available for the sustainable and cost effective harvesting of forest products in a silviculturally sound manner, all of which meet the objectives of the Forest Legacy Program. The purposes also include encouragement of management for and the production of economically sustainable and commercially viable forest products consistent with the other purposes of this easement and also include the long-term protection of the Conservation Property's capacity to

EXHIBIT "B"

produce economically valuable forestry products, and the encouragement of management of the property for industrial or commercial forestry only if consistent with the other purposes of this Conservation Easement.

The Parties agree that the purpose of this easement is also to assure that the Property herein described as Schedule "A" and hereby encumbered as set forth in Schedule "B" will be retained forever in its existing natural, scenic and forested condition and to prevent any use of the Property that will significantly impair or interfere with the conservation values of the Property. The Grantor intends that this easement will confine the use of the Property to such activities specifically enumerated herein which are consistent with the overall purposes of the easement by protecting the following particular values of the easement area: specifically the scenic, cultural, fish, wildlife and recreational resources, riparian areas and similar ecological values.

Example 3:

WHEREAS, the clearly delineated open space conservation goals and objectives as stated in Forest Legacy Program pursuant to Section 1217 of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (16 USC Section 2103C) which was created "to protect environmentally important private forest lands threatened with conversion to non-forest uses" has awarded a Forest Legacy grant in to the Grantors for purchase of a portion of the value of the Easement herein conveyed for a conservation easement on forestal, agricultural, and open space land.

Example 4:

The purpose of this easement is to effect the Forest Legacy Program in accordance with the provisions of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (16 U.S.C. 2103c) on the herein described land, which purposes include protecting environmentally important forest areas that are threatened by conversion to nonforest uses and for promoting forest land protection and other conservation opportunities. The purposes also include the protection of important scenic, cultural, fish, wildlife and recreational resources, riparian area, and other ecological values.

Example 5:

The purpose of this conservation easement is to restrict the exercise of all development rights, residential, commercial or otherwise, on the easement area and to protect the scenic and recreational values of said easement area from conversion to non-forest uses while at the same time allowing for the use of the area for commercial forestry and public recreation purposes consistent with the stated purposes, standards and general intent expressed in Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (16 USC 2103c) and the requirements of Section 7 for the Forest Legacy Program.

B. Reversion Clause:

EXHIBIT "B"

The Easement Holder acknowledges that this Easement was acquired with Federal funds under the Forest Legacy Program (P.L. 101-624; 104 Stat. 3359) and that the interest acquired cannot be sold, exchanged, or otherwise disposed, except as provided in Section 5.A, unless the United States is reimbursed the market value of the interest in land at the time of disposal. Provided, however, the Secretary of Agriculture may exercise discretion to consent to such sale, exchange, or disposition upon the State's tender of equal valued consideration acceptable to the Secretary.

APPENDIX J- Sample Content for Baseline Documentation

The following list has been modified from the Checklist included in the Land Trust Alliance and Trust for Public Land's *The Conservation Easement Handbook* (1988).

1. Cover Page
 - including name and location of property, signature of the author/collector and date
2. Table of Contents
3. Owner Acknowledgement of Condition (see Treas. Reg. Section 1.170A-14(g)(5)(i)(D)).
4. Background Information
 - Ownership information (name, address, and phone number of property owner)
 - Historical information on the donation/acquisition (brief chronological description of events that led to the protection of the property)
 - Summary of easement provisions (specific prohibitions, restrictions, retained rights, as derived from the language of the easement document)
 - Purpose of easement
 - Evidence of the significance of the protected property, as established either by the government policy (include copies of documents) or by the long-term protection strategy developed by the grantee
 - Corporate or agency resolution accepting gift (minutes of the meeting at which a gift is accepted or acquisition approved are adequate)
5. Legal Condition
 - A copy of the signed, recorded easement document
 - An assessor's parcel map
 - A clear title statement or preliminary title report, noting any liens against the property that could compromise its natural qualities or invalidate the easement
 - Copies of any other relevant easements or water rights associated with the property
6. Ecological Features
 - A general description of the ecological features that the easement seeks to protect, such as forest and plant communities, soil characteristics, and habitat.
 - The Forest Stewardship Plan should be used as a guide to determine what information is needed.
 - An inventory of rare, endangered, and/or threatened species and habitat found on the property

EXHIBIT "B"

- Reports from wildlife biologists or other specialists that document the status of significant natural elements
- 7. Agricultural Features
 - Intensity of grazing (can be determined by experts and expressed in "animal units" per acre) and farming
 - Level of pesticide use
- 8. Scenic Features
 - Official policies citing property's scenic value
 - Number of people who frequent nearby public places (roads, trails, parks) from which they can view property
- 9. Archeological, Cultural and Historical Features
 - Archeological, cultural and historical sites and resources found within the property, with a focus on those resources that the easement seeks to protect.
- 10. Human Created Features
 - Improvements (structures, trails, fences, wells, power lines, pipelines, irrigation systems, etc.)
 - Recreation/tourism attractions
 - Trespass damage and disturbed land (stray animals, introduced species evidence of vehicular trespass, etc.)
- 11. Photographs
 - Aerial photos, if appropriate
 - On-site photos (be sure to record key photo points, record distance and azimuth from structures or other fixed points, and sign and date all photos)
- 12. Maps
 - A state map showing easement location
 - An 8 1/2" X 11" section of a local road map showing easement location
 - The largest scale U.S. Geological Survey topographical map available (usually at a scale of 1:24,000, called a 7-1/2 minute scale), showing easement boundaries
- 13. Survey
 - Surveys generally are not required, but may be helpful

EXHIBIT "B"

For additional Information on Baseline Documentation:

Land Trust Alliance. 2001. *Working Forest Conservation Easements*.

Land Trust Alliance and Trust for New Hampshire Lands. 1991. *The Conservation Easement Stewardship Guide*.


Land Trust Alliance and Trust for Public Land. 1988. *The Conservation Easement Handbook*.

APPENDIX K- Sample Graphics and Signs

The following are sample graphics for the Forest Legacy Program that can be used for signs, newsletters, articles, and other Forest Legacy Program related documents.

EXHIBIT "B"

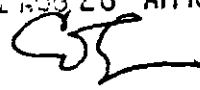


 <p>FOREST LEGACY CONSERVATION LAND</p>	<p><i>Optional Text Box that can include:</i></p> <ul style="list-style-type: none">- Reference to FLP;- Description of land conservation;- Identify contact information;- Address public access;- Include participants' logos; or- Other items.
--	---

FILED

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Honolulu, Hawaii 96813
Telephone: (808) 521-2302

2002 AUG 26 AM 10:12


C. OKAWA, CLERK
THIRD CIRCUIT COURT
STATE OF HAWAII

JAMES M. DOMBROSKI 3622
LAW OFFICES OF JAMES M. DOMBROSKI
P.O. Box 751027
Petaluma, California 94975
Telephone: (707) 762-7807

STEVEN C. MOORE Pro Hac Vice
NATIVE AMERICAN RIGHTS FUND
1506 Broadway
Boulder, Colorado 80302
Telephone: (303) 447-8760
Attorneys for Plaintiff
PELE DEFENSE FUND

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

PELE DEFENSE FUND,

Plaintiff,

vs.

THE ESTATE OF JAMES CAMPBELL,
DECEASED; W.H. MCVAY AND P.R.
CASSIDAY, in their fiduciary capacity as
Trustees under the Will and the Estate of
James Campbell,

Defendants.

CIVIL NO. 89-089 (Hilo)
(Declaratory Judgment/Injunction)

FINAL JUDGMENT;
EXHIBITS "A" AND "B"

Trial Date: August 2, 1994
Judge: Hon. Riki May Amano

FINAL JUDGMENT

Pursuant to the Findings of Fact and Conclusions of Law entered herein on

AUG 26 2002, this court hereby enters JUDGMENT finally resolving all claims as to all

I hereby certify that this is a full, true and correct
copy of the original on file in this office.



Clerk, Third Circuit Court, State of Hawaii

parties in favor of Plaintiff Pele Defense Fund (hereinafter PDF) and against the Estate of James Campbell as follows:

1. The Estate of James Campbell, its Trustees and each of their respective agents, employees, officers, heirs, personal representatives, successors, assigns, and beneficiaries, including successors in interest to 27,785.89 acres of land situate in the Puna District of the County of Hawai'i, State of Hawai'i (hereafter, the "land"), as described in the attached Exhibit "A", are permanently enjoined from excluding the following persons from entering the undeveloped portions of the land and using the developed portion for reasonable access to the undeveloped portions, (the developed areas are defined on Exhibit B attached hereto), to perform customarily and traditionally exercised subsistence and cultural practices:

- (a) Hawaiian subsistence or cultural practitioners who are descendants of the inhabitants of the Hawaiian Islands prior to 1778;
- (b) Person or persons accompanying Hawaiian subsistence or cultural practitioners described in (a); or
- (c) Persons related by blood, marriage or adoption to Hawaiian subsistence or cultural practitioners described in (a).

2. For purposes of liability, all persons listed above are not invitees of the owner of the land.

3. Notwithstanding that this judgment includes a "permanent" injunction, the Estate of James Campbell and successor owners of the land, are not barred from and may seek to develop the undeveloped portions of the land consistent with applicable law; and PDF may oppose further development by lawful means.

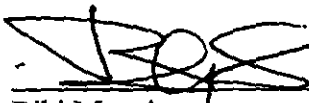
4. The owner of the land shall give PDF notice of any and all proposed future development prior to application for any state or county permits, or the initiation of any development-related activity that does not require such permits. On January 1 of each calendar year, PDF shall inform the owner of the land of the name(s) and address of its designated officer(s) for purposes of this notice.

5. PDF shall submit a monitoring plan consistent with this Judgment to the owner of the land within six (6) months after entry of this Judgment. If the parties are unable to agree on the terms of the monitoring plan, either one or both parties may request Court instructions.

6. The Court shall retain jurisdiction to enforce this Judgment and the permanent injunction. If enforcement is necessary, any party in violation of the terms herein may be subject to contempt of court and sanctions, including but not limited to the payment of costs and reasonable attorneys' fees.

7. This judgment constitutes the final resolution of the all claims against all parties. There are no other outstanding claims or defenses which have been left unresolved.

DATED: Hilo, Hawaii, AUG 26, 2002.


Riki May Amano
Judge of the above-entitled Court



APPROVED AS TO FORM:


Gary G. Grimmer
Robert E. Strand

Attorneys for Defendant Trustees of the
Campbell Estate
1470125.2

Pele Defense Fund vs. the Estate of James Campbell, Deceased, et al.
Civil No. 89-089 (Hilo), Declaratory Judgment/Injunction

19523-489



STATE OF HAWAII

SURVEY DIVISION

DEPT. OF ACCOUNTING AND GENERAL SERVICES

HONOLULU

December 13, 1983

C.S.P. No. 20,315

PORTIONS OF GOVERNMENT LANDS OF
MAKUU, KAOHE, KAIHO, KIKONA, KAPAHAU AND KAHALI

PARCEL A

Puna, Island of Hawaii, Hawaii

Beginning at the west corner of this parcel of land and on the south boundary of Land Court Application 1053, the coordinates of said point of beginning referred to Government Survey Triangulation Station "OLAA" being 47,769.67 feet South and 8228.41 feet West, thence running by azimuths measured clockwise from True South:-

1. 240° 05' 12" 24,288.19 feet along Land Court Application 1053;
2. 345° 23' 30" 1348.57 feet along the remainder of Government Lands;
3. 313° 00' 1221.60 feet along the remainder of Government Lands;
4. 330° 16' 4682.10 feet along the remainder of Government Lands;
5. 262° 03' 1960.70 feet along the remainder of Government Lands;
6. 290° 02' 627.40 feet along the remainder of Government Lands;
7. 314° 28' 4581.80 feet along the remainder of Government Lands;
8. 314° 47' 744.40 feet along the remainder of Government Lands;
9. 314° 12' 735.30 feet along the remainder of Government Lands;
10. 315° 31' 1825.53 feet along the remainder of Government Lands;
11. 40° 41' 13.81 feet along the north side of 20-Foot Road;

EXHIBIT "A"

19523 460

December 13, 1983

20,319

12. 338° 13'

14.99 feet along the west side of 20-Foot Road;

13. 60° 05' 12"

25,840.22 feet along Parcel B of Government Lands;

14. 140° 23'

16,220.18 feet along Parcel B of Government Lands to the point of beginning and containing an AREA OF 9,012 ACRES.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: Raymond S. Nakamura
Raymond S. Nakamura
Land Surveyor

pc

Compiled from CS7 4777,
CS7 18,637 and Govt.
Survey Records.

50185 MW3

19523 461



STATE OF HAWAII

SURVEY DIVISION

DEPT. OF ACCOUNTING AND GENERAL SERVICES
HONOLULU

December 13, 1983

C.S.P. NO. 10,316

PORTIONS OF GOVERNMENT LANDS OF
MAKUU, KAOHE, KADUU, KIKERUA, KAPAANU AND KAMAILI

PARCEL B

Puna, Island of Hawaii, Hawaii

Beginning at the west corner of this parcel of land and at an angle on the south boundary of Land Court Application 1053, the coordinates of said point of beginning referred to Government Survey Triangulation Station "OLAA" being 33,748.70 feet South and 22,098.90 feet West, thence running by azimuths measured clockwise from True South:-

1. 240° 05' 12" 16,000.00 feet along Land Court Application 1053;
2. 320° 23' 16,220.18 feet along Parcel A of Government Lands;
3. 240° 05' 12" 25,840.22 feet along Parcel A of Government Lands;
4. 338° 13' 3262.76 feet along the west side of the 20-Foot Road;
5. 340° 23' 19.26 feet along the west side of the 20-Foot Road;
6. 342° 31' 250.51 feet along the west side of the 20-Foot Road;
7. 337° 27' 156.17 feet along the west side of the 20-Foot Road;
8. 347° 14' 271.04 feet along the west side of the 20-Foot Road;
9. 348° 38' 331.85 feet along the west side of the 20-Foot Road;
10. 353° 51' 125.10 feet along the west side of the 20-Foot Road;
11. 359° 30' 1278.10 feet along the west side of the 20-Foot Road;

19523 462

C.S.P. No. 20,316

December 13, 1985

- | | |
|-----------------|---|
| 12. 358° 59' | 2128.77 feet along the west side of the 20-Foot Road; |
| 13. 332° 38' | 221.69 feet along the west side of the 20-Foot Road; |
| 14. 315° 33' | 287.92 feet along the west side of the 20-Foot Road; |
| 15. 258° 17' | 9.45 feet along the south side of the 20-Foot Road; |
| 16. 352° 29' | 6915.35 feet along Parcel C of Government Lands; |
| 17. 56° 27' | 1460.60 feet along Lots 3-B and 3-A of Upper Kaimu Homesteads; |
| 18. 39° 38' | 3534.10 feet along Lot 3-A of Upper Kaimu Homesteads, Grant 6571 to K. Kamakani, Grant 6330 to S. Kamelamala and Grant 6328 to D. Kamelamala; |
| 19. 53° 04' | 10,520.90 feet along Government Lands; |
| 20. 53° 31' 30" | 9863.30 feet along Grant 9275 to H. M. Molt, et al., Trustees under the Will and of the Estate of James Campbell, Deceased; |
| 21. 148° 00' | 4100.00 feet along R.P. 8030, L.C.Aw. 8559-B, Ap. 14 to William C. Lumaililo; |
| 22. 116° 00' | 8150.00 feet along R.P. 8030, L.C.Aw. 8559-B, Ap. 14 to William C. Lumaililo; |
| 23. 126° 59' | 25,105.30 feet along R.P. 8030, L.C.Aw. 8559-B, Ap. 14 to William C. Lumaililo, to the point of beginning and containing an AREA OF 16,843.891 ACRES. |

Excepting and reserving therefrom all existing trails within the above-described Parcel B.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: Raymond S. Nakamura
Raymond S. Nakamura
Land Surveyor

pt

Compiled from CSP 18,647
and other Govt. Survey
Records.

19523 463



STATE OF HAWAII

SURVEY DIVISION

DEPT. OF ACCOUNTING AND GENERAL SERVICES

HONOLULU

December 13, 1985

C.A.P. No. 20,317

PORTIONS OF GOVERNMENT LANDS OF
KAMAILI, KEHENA AND KIKALA

PARCEL C

Puna, Island of Hawaii, Hawaii

Beginning at the east corner of this parcel of land, on the south boundary of Royal Patent 4475, Land Patent 8199, Land Commission Award 7713, Apana 13 to V. Kamamalu and at the north corner of Grant 7365 to J. K. Pau, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALIU" being 115.60 feet South and 9325.70 feet West, thence running by azimuths measured clockwise from True South:-

1. 46° 00' 982.00 feet along Grant 7365 to J. K. Pau;
2. 85° 00' 652.00 feet along Grant 7365 to J. K. Pau;
3. 58° 45' 1050.00 feet along Grant 7365 to J. K. Pau;
4. 73° 30' 1005.00 feet along Grant 7547 to Wm. K. Keliihoomalu;
5. 45° 46' 1197.50 feet along Grant 7547 to Wm. K. Keliihoomalu;
6. 139° 03' 50.08 feet along the north side of 50-Foot Road;
7. 45° 46' 1064.16 feet along the west side of 50-Foot Road;
8. 16° 10' 2051.31 feet along the west side of 50-Foot Road;
9. 38° 34' 1319.67 feet along the west side of 50-Foot Road;
10. 323° 16' 2381.65 feet along the south side of 50-Foot Road;
11. 270° 00' 981.59 feet along the south side of 50-Foot Road;

19523 464

C.S.P. No. 20,317

December 13, 1985

12. 316° 30' 1493.59 feet along the south side of 50-Foot Road to the northwest side of Upper Puna Road;
13. Thence along the northwest side of Upper Puna Road, the direct azimuth and distance being:
27° 43' 20" 4458.54 feet;
14. 55° 41' 15" 171.71 feet along the northwest side of Upper Puna Road;
15. Thence along the northwest side of Upper Puna Road on a curve to the right with a radius of 150.00 feet, the chord azimuth and distance being:
79° 01' 15" 118.82 feet;
16. 102° 21' 15" 518.59 feet along the northwest side of Upper Puna Road;
17. Thence along the northwest side of Upper Puna Road on a curve to the left with a radius of 250.00 feet, the chord azimuth and distance being:
77° 01' 15" 213.94 feet;
18. 51° 41' 15" 284.74 feet along the northwest side of Upper Puna Road;
19. Thence along the northwest side of Upper Puna Road on a curve to the right with a radius of 475.00 feet, the chord azimuth and distance being:
55° 01' 15" 55.24 feet;
20. 58° 21' 15" 354.39 feet along the northwest side of Upper Puna Road;
21. Thence along the northwest side of Upper Puna Road on a curve to the left with a radius of 450.00 feet, the chord azimuth and distance being:
50° 46' 15" 118.77 feet;
22. 135° 50' 1250.91 feet along Grant 7731 to L. K. Swain;
23. 157° 30' 3467.50 feet along Grant 7593 to Louisa Swain, Grant 7478 to L. E. Blaisdell and the northeast end of 50-Foot Road;
24. 127° 35' 2173.00 feet along Lot III-B of Upper Kaimu Homesteads;
25. 172° 29' 6915.35 feet along Parcel B of Government Lands;
26. 258° 17' 139.94 feet along the south side of 20-Foot Road;
27. 244° 12' 614.60 feet along the south side of 20-Foot Road;

C-5018105

19523 4.5

December 13, 1983

28. 195° 08' 397.80 feet along the south side of 20-Foot Road;
29. 254° 12' 783.69 feet along the south side of 20-Foot Road;
30. 254° 05' 1202.89 feet along the south side of 20-Foot Road;
31. 254° 48' 283.02 feet along the south side of 20-Foot Road;
32. 242° 35' 876.64 feet along the south side of 20-Foot Road;
33. 245° 28' 581.05 feet along the south side of 20-Foot Road;
34. 242° 17' 539.85 feet along the south side of 20-Foot Road;
35. 246° 20' 20.81 feet along the south side of 20-Foot Road;
36. 240° 31' 1658.87 feet along the south side of 20-Foot Road;
37. 240° 47' 707.62 feet along the south side of 20-Foot Road;
38. 309° 05' 1350.70 feet along R.P. 4475, R.P. 6883, L.P. 8200, L.C.Aw. 7713, Ap. 14 to V. Kanamalu;
39. 296° 22' 753.00 feet along R.P. 4475, R.P. 6883, L.P. 8200, L.C.Aw. 7713, Ap. 14 to V. Kanamalu;
40. 286° 00' 2750.00 feet along R.P. 4475, L.P. 8199, L.C.Aw. 7713, Ap. 13 to V. Kanamalu to the point of beginning and containing an AREA OF 1930 ACRES, MORE OR LESS.

Excepting and reserving therefrom all existing trails within the above-described Parcel B.

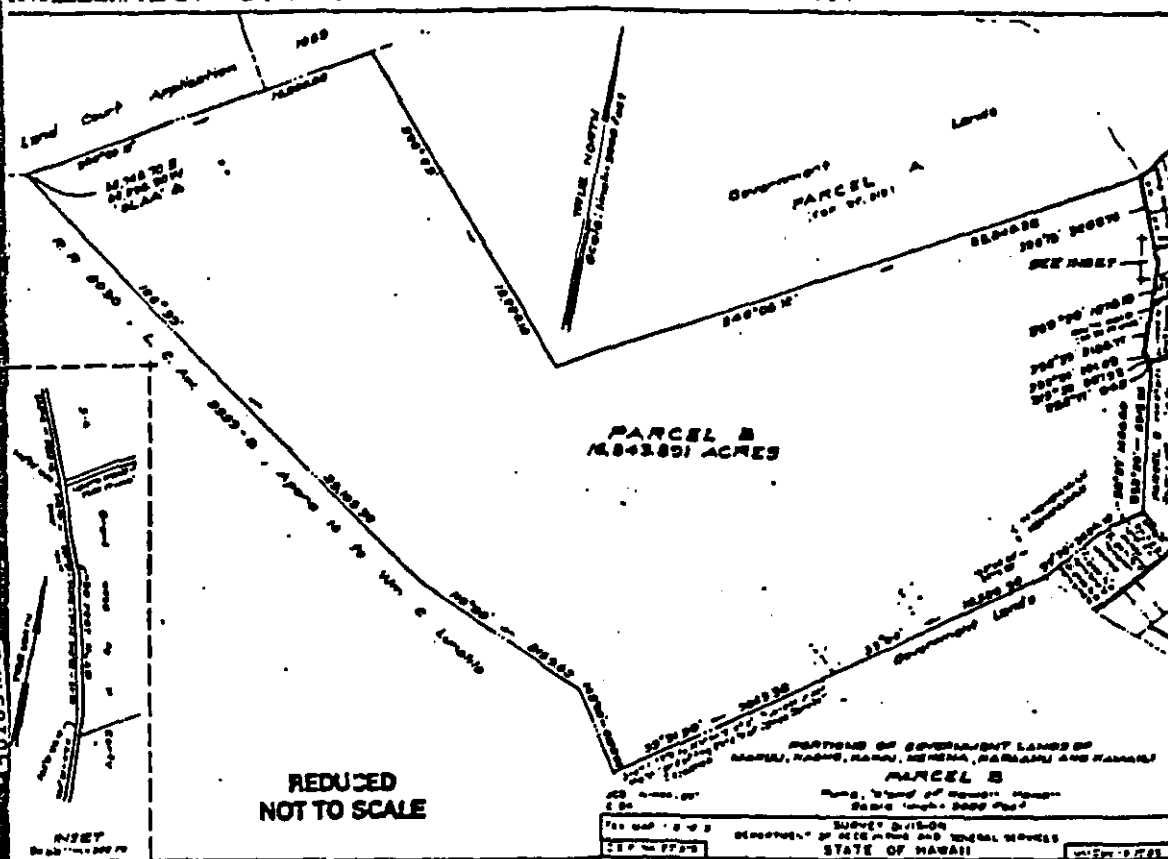
SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: Raymond S. Nakamura
Raymond S. Nakamura
Land Surveyor

Compiled from CSF 9446
and Govt. Survey Records.

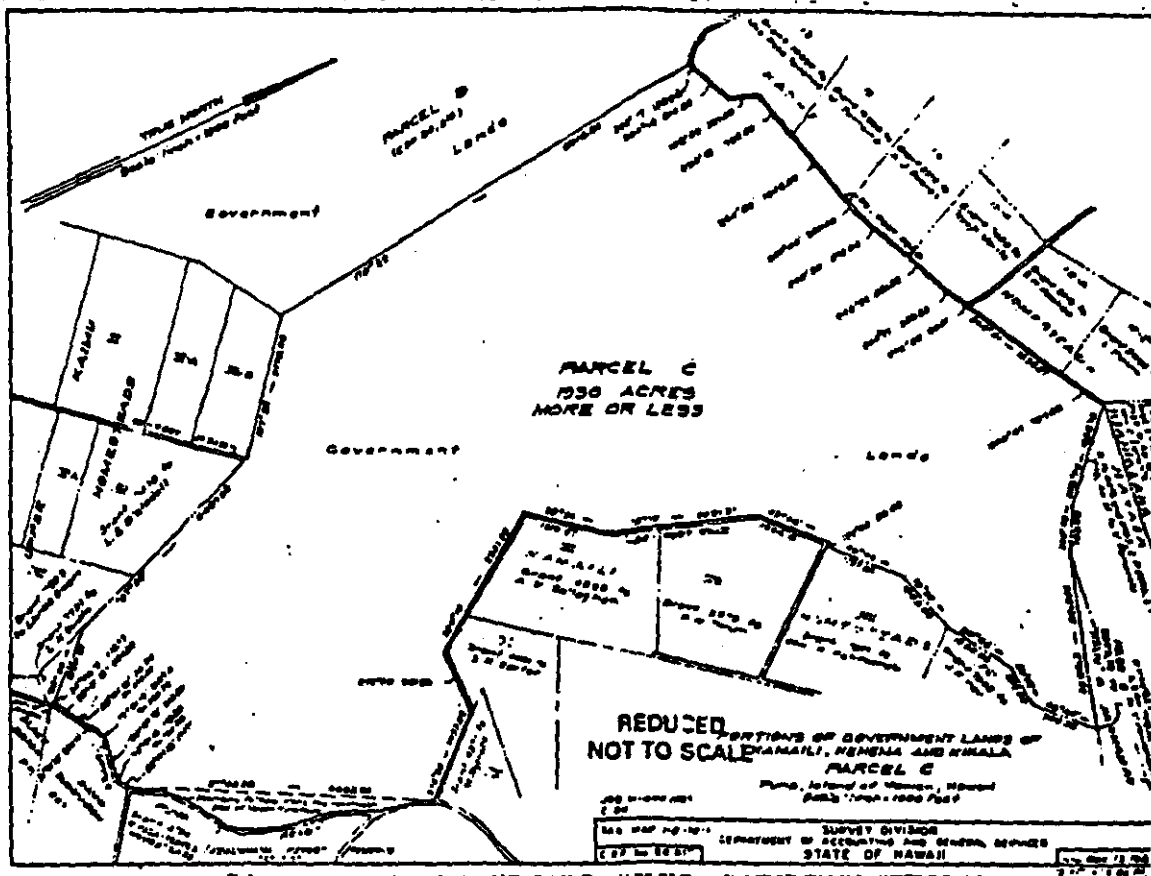
pt

19523 467



Recorder's Memo: Legibility of Writing, Typing, or Printing UNSATISFACTORY
in this document when received

19523 468



Recorder's Memo: Legibility of Printing Type of Paper Used in this Document when received

EXHIBIT "B"

DEVELOPED AREAS

The developed areas as of January 1, 2001, are the access road, geothermal drill sites and areas cleared for geothermal drill sites.

EXHIBIT "D"

Wao Kele o puna Operations and Management Funding Scenarios:

1). Minimal operations cost:

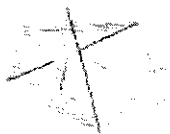
Minimal Signage for safety	\$3000
ANNUALLY:	
- Basic peripheral Invasive Species Control-	\$2000/yr
- DLNR Vehicle Usage-	\$2000/yr
- Fire Pre-suppression-	\$1000/yr
- Endangered Species Mgmt-	\$5000/yr
- Basic Field Staff Time-	\$4000/yr
- Misc. expenses-	\$3000/yr (fence materials, helicopter time,
cement, etc. as needed)	
- Access Improvements-	\$8000/yr (trails and roads maintenance/repairs
and reforestation of cleared areas)	
- Administrative costs -	\$10,000
- Utilization of DOFAW Base yard Office space	\$5,000
- Minimal enforcement	\$10,000
TOTAL	\$53,000

2). Improved operations cost:


Minimal Signage for safety	\$3000
- Basic peripheral Invasive Species Control-	\$2000/yr
- DLNR Vehicle Usage-	\$2000/yr
- Fire Pre-suppression-	\$1000/yr
- Endangered Species Mgmt-	\$5000/yr
- Basic Field Staff Time-	\$4000/yr
- Misc. expenses-	\$3000/yr (fence materials, helicopter time,
cement, etc. as needed)	
- Access Improvements-	\$8000/yr (trails and roads maintenance/repairs
and reforestation of cleared areas)	
- Administrative costs -	\$10,000
- Utilization of DOFAW Base yard Office space	\$5,000
- Minimal enforcement	\$10,000
- Fire suppression capacity	\$10,000
- Management plan development	\$30,000
- EA's	\$20,000
- Expansion of hunting program	\$10,000
- Establishment of permit system	\$5,000
TOTAL	\$75,000 + \$53,000 = \$128,000

3). Ideal Operations Costs:

Minimal Signage for safety	\$3000
Basic peripheral Invasive Species Control-	\$2000/yr
- DLNR Vehicle Usage-	\$2000/yr
- Fire Pre-suppression-	\$1000/yr
- Endangered Species Mgmt-	\$5000/yr
- Basic Field Staff Time-	\$4000/yr
- Misc. expenses-	\$3000/yr (fence materials, helicopter time,
cement, etc. as needed)	
- Access Improvements-	\$8000/yr (trails and roads maintenance/repairs
and reforestation of cleared areas)	
- Administrative costs -	\$10,000
- Utilization of DOFAW Base yard Office space	\$5,000
- Minimal enforcement	\$10,000
<hr/>	
- Fire suppression capacity	\$10,000
- Management plan development	\$30,000
- EA's	\$20,000
- Expansion of hunting program	\$10,000
- Establishment of permit system	\$5,000
<hr/>	
- Coordinator	\$50,000
- Designated vehicle for Coordinator	\$30,000
- Adequate enforcement	\$20,000
<hr/>	
TOTAL	\$100,000 + \$75,000 + \$53,000 = \$228,000
GRAND TOTAL	\$228,000



Bill J Wynhoff/AG/StateHiUS
01/15/2008 09:42 AM

To
cc gayle.m.ito@hawaii.gov, Michael
Constantinides/DLNR/StateHiUS@StateHiUS, Nami J
Wong/DLNR/StateHiUS@StateHiUS, Sheri S
bcc
Subject Re: Requesting copies of Wao Kele O Puna docs & subzone
removal advice 

Sheri

Turns out I do have a box of docs regarding this transaction. But I don't seem to have that, or if I do, it isn't immediately apparent. You can get it from the bureau easily.

Best regards,

William J. Wynhoff
465 South King Street, Suite 300
Honolulu, Hawaii 96813
Phone: 808 587-2993
Fax: 808 587-2999
E Mail: bill.j.wynhoff@hawaii.gov

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Bill J
Wynhoff/AG/StateHiUS

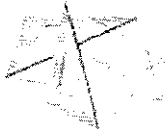
To Sheri S Mann/DLNR/StateHiUS
cc gayle.m.ito@hawaii.gov, Michael Constantinides/DLNR/StateHiUS@StateHiUS, Nami J
Wong/DLNR/StateHiUS@StateHiUS
Subject Re: Requesting copies of Wao Kelo O Puna docs & subzone removal advice [Link](#)

01/15/2008 07:26 AM

Sheri - responses in red below.

William J. Wynhoff
465 South King Street, Suite 300
Honolulu, Hawaii 96813
Phone: 808 587-2993
Fax: 808 587-2999
E Mail: bill.j.wynhoff@hawaii.gov

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Bill J Wynhoff/AG/StateHiUS

01/15/2008 07:26 AM

To Sheri S Mann/DLNR/StateHiUS@StateHiUS

cc gayle.m.ito@hawaii.gov, Michael Constantinides/DLNR/StateHiUS@StateHiUS, Nami J Wong/DLNR/StateHiUS@StateHiUS

bcc

Subject Re: Requesting copies of Wao Kelo O Puna docs & subzone removal advice

Sheri - responses in red below.

William J. Wynhoff
465 South King Street, Suite 300
Honolulu, Hawaii 96813
Phone: 808 587-2993
Fax: 808 587-2999
E Mail: bill.j.wynhoff@hawaii.gov

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Sheri S Mann/DLNR/StateHiUS

01/14/2008 12:28 PM

To Bill J Wynhoff/AG/StateHiUS

cc Nami J Wong/DLNR/StateHiUS, Michael Constantinides/DLNR/StateHiUS,
gayle.m.ito@hawaii.gov

Subje Requesting copies of Wao Kelo O Puna docs & subzone removal advice
ct

Aloha Bill,

As you may or may not know activities associated with Wao Kele O Puna (WKOP) continually to move forward at varying speeds. One such activity is the filling and abandonment of the KA1-1 well, described in #13 of the June 27, 2006 MOA between OHA & DLNR. In their effort to secure a bid for this, DLNR Engineering Division is seeking several documents related to access.

Attached to a cluster of documents from Paul Johnson Park & Niles dated August 11, 2006 to you and Peter Young, are two Bureau of Conveyances Documents #'s 2006-129683 (Warranty Deed & Grant of Access Easement) & 2006-129685 (Assignment of Licensor's Interest in License TPL-OHA). In the former, reference is made to Document # 2006-129681 but it was not included. **Would you by chance have Document 2006-129681, the meets & bounds description, and any map associated with this document?** No. I don't have any documents relating to this transactions any more.

Secondly, do you know of any existing agreement with the Olsen Trust pertaining to an access agreement

with OHA or DLNR? We want to be certain that DLNR has full authority to access the road that traverses the Olsen Trust land and leads to the road inside of WKOP. As I recall the documentation, OHA got an access agreement. I remember (but could be wrong) that Campbell gave us the access over the Olsen property BEFORE it transferred to Olsen. Thus Olsen is subject to the easement.

Finally, as per #16 on page 10 of the above described MOA, we are interested in any advice you may have about **the process to remove the present Geothermal Subzone designation**. Not only do OHA and DLNR want this subzone removed for the two WKOP TMK's, but there are many private landowners in the immediate area who without their consent were forced to accept this subzone designation on their land, and would also like it removed.

I really am not sure. HRS s. 205-5.2(e) provides:

(e) The designation of any geothermal resource subzone may be withdrawn by the board of land and natural resources after proceedings conducted pursuant to chapter 91. The board shall withdraw a designation only upon finding by a preponderance of the evidence that the area is no longer suited for designation; provided that the designation shall not be withdrawn for areas in which active exploration, development, production or distribution of electrical energy from geothermal sources or direct use applications of geothermal resources are taking place.

I will check as to what kind of "proceedings" this might mean. Perhaps it refers back to 205-5.2(a) which allows a petition for designation. Please find out how and when the area was designated as a geothermal resource subzone and what rules govern designation. That might help us figure out what rules cover undesignation.

Sheri S. Mann
Cooperative Resource Management Forester
Division of Forestry & Wildlife
Department of Land & Natural Resources
State of Hawaii
Ph: 808-587-4172
Fax: 808-587-0160
Cell: 808-721-6092

Bill J Wynhoff/AG/StateHiUS

To Sheri S Mann/DLNR/StateHiUS@StateHiUS

cc

01/10/2008 03:48 PM

Subject Re: Wao Kelo O Puna [Link](#)

I got this one.

William J. Wynhoff
465 South King Street, Suite 300
Honolulu, Hawaii 96813
Phone: 808 587-2993

Fax: 808 587-2999
E Mail: bill.j.wynhoff@hawaii.gov

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Sheri S Mann/DLNR/StateHiUS

To Bill J Wynhoff/AG/StateHiUS

cc

01/10/2008 03:26 PM

Subject Re: Wao Kelo O Puna [Link](#)

Aloha Bill,

This is a test message. Can you please let me know if you get this?

Thanks

Sheri

Bill J
Wynhoff/AG/State
HiUS

To Michael Constantinides/DLNR/StateHiUS@StateHiUS
cc Charlene E Unoki/DLNR/StateHiUS@StateHiUS, Jeanean H
Imanaka-Kaneshiro/AG/StateHiUS@StateHiUS, Paul J Conry/DLNR/StateHiUS@StateHiUS, Sheri S
Mann/DLNR/StateHiUS@StateHiUS

01/10/2008 03:14

PM

Subject Re: Wao Kelo O Puna [Link](#)

I didn't realize you already went through the process! That's great. I can definitely help draft something.

Best regards,

William J. Wynhoff
465 South King Street, Suite 300
Honolulu, Hawaii 96813
Phone: 808 587-2993
Fax: 808 587-2999
E Mail: bill.j.wynhoff@hawaii.gov

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Michael
Constantinides/DLNR
/StateHiUS
01/10/2008 03:05 PM
To Bill J Wynhoff/AG/StateHiUS@StateHiUS
cc Jeanean H Imanaka-Kaneshiro/AG/StateHiUS@StateHiUS, Sonia Faust/AG/StateHiUS@StateHiUS,
Charlene E Unoki/DLNR/StateHiUS@StateHiUS, Paul J Conry/DLNR/StateHiUS@StateHiUS, Sheri S
Mann/DLNR/StateHiUS@StateHiUS
Subject Re: Wao Kelo O Puna [Link](#)

Aloha Bill,

Thanks for the offer of assistance. While OHA already owns the fee title for these lands, the overall procurement and management strategy between DLNR and OHA was to initially add these lands to the forest reserve system so that they would fall under the guidelines and protections of HRS 183 and HAR 104. We have already conducted the public hearing and received BLNR approval to add the lands to the FR system.

Operating under the assumption that OHA fee lands comprise "government lands" per HRS 183-11, it seems as though the Governor can set the lands aside as forest reserve. Since this process is different with OHA involved, we could use your assistance in determining how the EO wording would change. Perhaps the EO cover page would state "TO:" OHA instead of DLNR, and paragraph 2 which typically states the FR name and what entity is responsible would state something like "For addition to WKOP FR, to be under the control and mgt. of OHA...." ???

In turn OHA has delegated/authorized DLNR/DOFAW to do the field mgt. for the first 10 years or so under a separate MOA.

Thank you, Michael

I am not yet clear on is whether the set aside language would name OHA or DLNR.

Bill J Wynhoff/AG/StateHiUS wrote on 01/10/2008 01:23:14 PM:

> Jeanean,
>
> I understand you have a document relating to putting OHA's Wao Kele
> O Puna property into the forest reserve. I worked on this project
> before and perhaps it would be best if I worked with you directly on
> this. If that's ok, please let me see what we have. I send this to
> Sonia too in case she prefers something different.
>

> Michael, I don't know much yet and maybe I'm just confused (or
> wrong) but why are we at the documentation stage? Have we already
> met the requirements of s. 183-12 and 13? Is OHA aware of 183-16?
>
> Best regards,
>
> William J. Wynhoff
> 465 South King Street, Suite 300
> Honolulu, Hawaii 96813
> Phone: 808 587-2993
> Fax: 808 587-2999
> E Mail: bill.j.wynhoff@hawaii.gov
>
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>

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/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

20 2/8 29

LAND COURT

REGULAR SYSTEM

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CARLSMITH BALL LLP
ASB Tower, Suite 2200
1001 Bishop Street
Honolulu, Hawaii 96813
Attention: Eric A. James
Telephone: 808.523.2500

TGOH 200527898 →
TGES A5-101-1630
BARBARA PAULO

TITLE OF DOCUMENT:

Easement No. E02043900

GRANT OF EASEMENT FOR ACCESS RIGHTS

PARTIES TO DOCUMENT:

INITIAL GRANTOR: C.R. CHURCHILL, D.A. HEENAN, RICHARD W. GUSHMAN, II and RONALD J. ZLATOPER, the duly appointed, qualified and acting TRUSTEES UNDER THE WILL AND OF THE ESTATE OF JAMES CAMPBELL, DECEASED, acting in their fiduciary and not in their individual capacities

GRANTEE: THE TRUST FOR PUBLIC LAND a California nonprofit public benefit corporation
The Trust For Public Land National Office
116 New Montgomery Street
4th Floor, San Francisco, California 94105

TAX MAP KEY(S): Hawaii 1-2-10-2
Hawaii 1-2-10-3

(This document consists of 18 pages.)

GRANT OF EASEMENT FOR ACCESS RIGHTS

THIS GRANT OF EASEMENT FOR ACCESS RIGHTS ("Grant of Easement") is made this 14th day of July, 2006, by and between C.R. CHURCHILL, D.A. HEENAN, RICHARD W. GUSHMAN, II and RONALD J. ZLATOPER, the duly appointed, qualified and acting TRUSTEES UNDER THE WILL AND OF THE ESTATE OF JAMES CAMPBELL, DECEASED, acting in their fiduciary and not in their individual capacities, whose principal place of business and post office address is James Campbell Building, 1001 Kamokila Boulevard, Kapolei, Hawaii 96707 ("Initial Grantor"), and THE TRUST FOR PUBLIC LAND, a California nonprofit public benefit corporation, whose principal place of business and post office address is The Trust For Public Land National Office, 116 New Montgomery St., 4th Floor, San Francisco, California 94105 ("Grantee");

WITNESSETH:

WHEREAS, Initial Grantor has conveyed its interest in the property more particularly described on **Exhibit C** attached hereto and incorporated by this reference (the "Property") to Edmund C. Olson, as Trustee of the Edmund C. Olson Trust No. 2 under agreement dated August 21, 1985 ("Fee Owner") by that certain Trustees' Limited Warranty Deed with Covenants dated December 20, 2005 ("Deed"), recorded in the Bureau of Conveyances of the State of Hawaii ("Bureau") as Document No. 2006-010985;

WHEREAS, pursuant to paragraph 1 of the Deed ("Reserved Right"), the Initial Grantor reserved the right to grant an easement over the Property in the form set forth below to Initial Grantor's successor in title to the two parcels of real property adjacent to the Property and more particularly described in **Exhibit B** attached hereto and incorporated herein by reference ("Wao Kele O Puna Property");

WHEREAS, by deed of even date, Grantee is the successor in title to the Initial Grantor's interest in the Wao Kele O Puna Property and Initial Grantor desires to grant this Grant of Easement to Grantee pursuant to the Reserved Right;

NOW, THEREFORE, Initial Grantor, for and in consideration of the sum of ONE AND NO/100 DOLLAR (\$1.00) paid to Initial Grantor by Grantee, receipt whereof is hereby acknowledged, and of the covenants hereinafter contained and on the part of Grantee, its successors and assigns to be observed and performed, do hereby grant unto Grantee, its successors and assigns, perpetual, nonexclusive easement rights as set forth below over, across, and through the road shown on the map attached hereto as **Exhibit A** and incorporated by this reference (the "Easement Area"), which crosses the Property.

Grantee acknowledges that upon the recording of this Grant of Easement at the Bureau, the Fee Owner, as the successor in title to the Initial Grantor's interest in the Property, shall be deemed and construed for all purposes of this Grant of Easement as the "Grantor", and the Initial Grantor shall have no further liability hereunder;

TO HAVE AND TO HOLD the same unto Grantee, its successors and permitted assigns, for access to the Wao Kele O Puna Property, subject to earlier termination pursuant to the terms and conditions contained herein.

SUBJECT, HOWEVER, to any and all existing uses, licenses, easements and other encumbrances, recorded or unrecorded; and

RESERVING, HOWEVER, unto Grantor, for the benefit of Grantor, its lessees, tenants, licensees and other occupants, all rights of Grantor with respect to the Easement Area, including but not limited to the rights specifically reserved to Grantor herein, other than as specifically conferred upon Grantee herein.

In consideration of the rights hereby granted and the acceptance thereof and the obligations hereby assumed, the parties mutually covenant and agree as follows:

1. Permitted Use of Easement Area. Grantee, its employees, representatives, consultants, contractors, invitees, tenants, licensees, agents, successors and assigns, shall use the Easement Area solely for access purposes to the extent necessary for ingress and egress of vehicular and pedestrian traffic to and from the Wao Kele O Puna Property, and for no other purpose. Grantee shall not have any rights to park cars on the Easement Area without the prior written consent of Grantor. If the land through which the Easement Area crosses is encumbered by a declaration of covenants, Grantee's use of the Easement Area shall at all times conform to all covenants and conditions contained in such declaration of covenants. Grantee shall not commit or cause to be committed any waste in or upon the Easement Area or maintain any public or private nuisance or any other action which may interfere with or disturb the quiet enjoyment of any surrounding property, nor shall Grantee permit the Easement Area to be used for any improper, offensive or unlawful purpose.

2. Maintenance. Grantor has no obligation to maintain the Easement Area. Grantee shall at all times exercise every reasonable precaution against damaging the property adjoining the Easement Area and shall immediately repair any such damaged property.

3. Observance of Laws and Other Requirements. Grantee shall at all times during the term of this Grant of Easement: (a) observe, perform and comply with all Applicable Laws now or hereafter made with respect to the Easement Area or use thereof; (b) maintain in effect all permits, approvals, licenses, consents or other entitlements required by Applicable Laws for Grantee's permitted use of the Easement Area hereunder; and (c) keep the Easement Area free from hazards and nuisances caused by Grantee's use of the Easement Area. Any failure by Grantee to comply with the requirements set forth in clauses (a) through (c) of the immediately preceding sentence shall be an event of default under this Grant of Easement. Grantee shall Indemnify (defined in paragraph 7 (Indemnity)) Grantor against all actions, suits, claims and damages by whomsoever brought or made by reason of the nonobservance or nonperformance of the requirements of: (i) all Applicable Laws, (ii) permits, approvals, licenses, consents or other entitlements for Grantee's use of the Easement Area, and (iii) this paragraph 3 (Observance of Laws and Other Requirements). As used herein the term "Applicable Laws," means all federal, state and local laws, statutes, ordinances, codes, rules, regulations, standards, directives, interpretations and conditions of approval, and all legislative, administrative or judicial orders, decrees, requirements, rulings or judgments, which now or in the future may be applicable to the land through which the Easement Area crosses, or to the use of the same.

4. Condition of Easement Area. Grantee confirms to Grantor that Grantee has made such investigation of facts concerning the physical condition of the Easement Area as Grantee has deemed appropriate. Grantee accepts the Easement Area in "as is" condition and acknowledges that Grantor have made no representations concerning the condition of the

4

Easement Area or the suitability or fitness of the Easement Area for any particular use or purpose. Grantee also acknowledges that the improvements, if any, within the Easement Area are or may be nonconforming under Applicable Laws. Grantee assumes all risks arising from any nonconforming improvements within the Easement Area.

5. Construction of Improvements. No improvements may be constructed on or adjacent to the Easement Area without the prior written consent of Grantor, which consent may be withheld in Grantor's sole discretion. Any approval by Grantor of such plans and specifications shall not be construed as an acknowledgment or representation by Grantor of the architectural, structural or legal sufficiency of the plans and specifications or of any improvements built in accordance therewith or of any other matter related to the plans and specifications or any improvements built in accordance therewith. Grantee shall be responsible for ascertaining the location of any other facilities within or adjacent to the Easement Area prior to undertaking any construction within the Easement Area, and Grantee shall be solely responsible for any and all damage caused to other facilities or resulting from damage to such other facilities which may be within or adjacent to the Easement Area. Upon completion of any construction within the Easement Area, Grantee shall provide Grantor, at Grantee's sole expense, with a complete set of plans and specifications for the entirety of such construction certified by Grantee's engineer or other duly licensed consultant (i) as showing the completed construction "as built", and (ii) as being in substantial compliance with the approved plans and specifications.

6. Limitation of Liability. Grantor shall not be liable or responsible for any loss or damage sustained by the Grantee or anyone claiming through or under Grantee because of the acts or omissions of Grantee or any lessee, tenant, licensee, invitee or other occupant of Grantor's lands through which the Easement Area crosses, or because of any act or omission of any adjacent landowner(s), its/their lessees, tenants, licensees or other occupants.

7. Indemnity. Grantee shall Indemnify Grantor, to the extent permitted by law, from and against any and all actions, suits, losses, costs, damages, liabilities or claims thereof, including reasonable attorneys' fees, arising out of or in connection with any loss or damage to property and/or injury to or death of persons arising out of or resulting from the acts or omissions of Grantee or anyone claiming by, through or under Grantee in connection with the exercise of the rights or privileges granted hereunder, or arising out of or in connection with any improvements that Grantee constructs within the Easement Area. Grantee's obligations to Indemnify Grantor under this paragraph 7 (Indemnity), under paragraph 3 (Observance of Laws and Other Requirements) and under paragraph 9 (Liens) shall survive the termination of this Grant of Easement and shall be binding upon Grantee, its successors and permitted assigns. As used herein, the term "Indemnify" means the protection of a party, by a money payment if necessary, against out-of-pocket loss. The term shall include an obligation by the indemnitor to defend and hold the indemnitee harmless (with counsel acceptable to the indemnitee) in connection with any claim against which the Indemnity operates. The obligation to Indemnify shall specifically include, but shall not be limited to payment of all reasonable costs and expenses paid by the indemnitee or reasonably anticipated to be incurred by the indemnitee for the indemnitee's defense, including without limitation, reasonable attorneys' fees and costs, and all other consultants' reasonable fees and costs. An Indemnity shall also specifically include all reasonable costs for research regarding settlement or other preventive measures undertaken by the indemnitee with regard to any such claim. The foregoing obligation to Indemnify shall not apply to any action, suit, loss, cost, damages, liabilities or claim which is caused by the acts or omission of Grantor or its affiliates or their employees, tenants, licensees, agents contractors or

representatives if a Court issues a final non-appealable order or judgment that the primary cause of any related damage was Grantor's gross negligence or willful misconduct.

8. Insurance. At Grantee's own expense, Grantee shall maintain a policy or policies of general liability insurance covering the Easement Area and all of Grantee's operations conducted therefrom, in an amount of at least ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) for each occurrence, with deductibles of no more than TWENTY FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00) for each occurrence, and naming Grantor as an additional insured. From time to time, but no less frequently than once per year, Grantee shall provide Grantor with evidence reasonably satisfactory to Grantor that Grantee has the insurance coverage required by this paragraph 8 (Insurance), and that Grantor are an additional insured thereunder.

9. Liens. Grantee shall not commit or suffer any act or neglect whereby the Easement Area becomes subject to any attachment, judgment, lien, charge or encumbrance whatsoever, and shall Indemnify Grantor from and against any and all loss, liability, claim or demand for damage or injury with respect thereto.

10. Abandonment, Termination or Relocation. In the event (i) Grantee enters into a written agreement with Grantor abandoning its use of the Easement Area, (ii) the Easement Area is realigned or relocated in accordance with paragraph 17 (Grantor's Reservations), or (iii) the Easement Area is dedicated to and accepted by any governmental authority, this Grant of Easement shall automatically terminate, and Grantee shall, at Grantor's request, at any time after said abandonment, termination, relocation or dedication, execute such documents as Grantor reasonably requests for the purpose of terminating this Grant of Easement. Grantee hereby agrees that on or before the termination or cancellation of this Grant of Easement, or within a reasonable period following such termination or cancellation, Grantee will remove its own improvements to the Easement Area and will restore the Easement Area to the condition existing at the time of entry thereon, reasonable wear and tear from normal usage or damage by unavoidable casualty excepted.

11. Condemnation. If any rights to use the Easement Area are taken or condemned in whole or part, or if the Easement Area is taken or condemned in whole or part, by any authority having the power of eminent domain, all compensation and damages awarded on account of the condemnation or taking shall be payable to Grantor, their lessees, tenants, licensees or other occupants, if any, as their interests appear, without any apportionment to Grantee.

12. Default and Remedies. If either party fails to perform any of the terms, covenants and agreements contained herein, if such failure continues for a period of ten (10) days after written notice, then the non-defaulting party shall be entitled to all remedies available to it at law or equity, including by way of example and not in limitation thereof, the right to sue such person for specific performance, injunctive relief and/or monetary damages, including without limitation, reasonable attorneys' fees, costs and expenses. Notwithstanding the foregoing, the parties agree that this grant may not be terminated except as provided in paragraph 10 above.

13. Cure by Grantor. Whenever under any provision of this Grant of Easement, Grantee is obligated to make payment or expenditure or to do any act or thing, or to incur any liability whatsoever, and Grantee, after demand for performance has been made to Grantee by Grantor, fails, refuses or neglects to perform as herein required, Grantor shall be

entitled but shall not be obligated to make any such payment or expenditure, or to do any such act or thing, or to incur any such liability, all on behalf of and at the cost and for the benefit of Grantee, and in such event the amount thereof shall be due to and at the option of and upon demand by Grantor, together with interest on any such amounts unpaid, at a rate equal to twelve percent (12%) per annum (but in no event more than the maximum per annum rate of interest permitted to be charged by then Applicable Laws), and Grantee shall reimburse Grantor for any and all loss, damage or expense, including reasonable attorneys' fees, which Grantor may suffer or be put to by reason thereof. Nothing contained herein shall prevent Grantor, at the cost of and for the benefit of Grantee, from satisfying any judgment, liability or lien, as the case may be, in the event Grantee fails or refuses to satisfy the same as herein provided.

14. Expenses of Enforcement. If Grantor or Grantee brings any legal proceeding to enforce any of the terms, covenants or conditions hereof, the unsuccessful party in such proceeding shall pay the prevailing party's costs and expenses, including reasonable attorneys' fees, incurred in the bringing or defending of such proceeding.

15. Remedies Cumulative. The remedies set forth herein shall be in addition to remedies otherwise applicable or provided herein or otherwise available at law or in equity, it being understood that all rights and remedies shall always be non-exclusive and cumulative and that the exercise of one remedy or form of relief available hereunder shall not be exclusive of, or constitute a waiver of, any other.

16. No Waiver. The failure in any case to enforce the provisions of any covenant, condition, restriction, obligation or charge of this Grant of Easement shall not constitute a waiver of any right to enforce any such provision of this Grant of Easement in any other case.

17. Grantor's Reservations. Any other provision herein notwithstanding, and in addition to any other reservations set forth herein, this Grant of Easement is subject to the reservation of Grantor of the following rights, to which Grantee hereby consents: (i) the right from time to time to realign or relocate the Easement Area, at Grantee's own cost (including, without limitation, all costs to realign or relocate Grantee's improvements, if any, within the Easement Area), as development or use of the surrounding lands may require, provided that upon completion of such realignment or relocation, the Grantor shall enter into a grant of easement with Grantee for such realigned or relocated Easement Area, which new grant of easement shall be in substantially the same form as this Grant of Easement; (ii) the right to subdivide all or any portion of the land through which the Easement Area crosses into lots or to consolidate all or any portion of such land with adjoining land and to resubdivide the same into lots at Grantor's expense; (iii) the right to utilize or to permit others to utilize the Easement Area, provided that such use does not unreasonably interfere with Grantee's use of the same; and (iv) the right to make one or more irrevocable, nonexclusive grants or assignments of nonexclusive rights in the Easement Area from time to time to any person, including without limitation, governmental authorities, public or private utilities, or others.

18. Grantee's Waiver of Additional Access Rights. Grantee expressly waives any claim to access over other lands owned by Grantor whether by implication, necessity or otherwise.

19. Partial Invalidity. If any term, provision, covenant or condition of this Grant of Easement or the application thereof to any person or circumstances shall to any extent, be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder

7

of this Grant of Easement, or the application of such term, provision, covenant or condition of this Grant of Easement to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term or provision of this Grant of Easement shall be valid and enforceable to the fullest extent permitted by law.

20. Binding Effect. All the terms, covenants and conditions of this Grant of Easement shall run with the land and shall inure to the benefit of and be binding upon the successors, successors in trust and assigns of Grantor and the heirs, devisees, personal representatives, successors and assigns of Grantee to the same extent as said terms, covenants and conditions inure to the benefit of and are binding upon Grantor and Grantee, respectively.

21. Grammar. The necessary grammatical changes required to make the provision of this Grant of Easement apply in the plural sense where there is more than one grantee and to either corporations, associations, partnerships, or individuals, males or females, shall in all instances be assumed as though in each case fully expressed.

22. Governing Law. The laws of the State of Hawaii shall govern the validity, performance and enforcement of this Grant of Easement.

23. Amendment. This Grant of Easement may only be amended in writing, executed by both Grantor and Grantee.

24. Estate's Liability. Any liability which may arise as a consequence of the execution of this instrument by or on behalf of the Trustees under the Will and of the Estate of James Campbell, Deceased, shall be a liability of the Estate of James Campbell, Deceased, and not the personal liability of any trustee or employee of the Estate of James Campbell.

[This space left blank intentionally; signatures on following page]

IN WITNESS WHEREOF, the undersigned have executed this instrument the day and year first above written.

Grantee:

THE TRUST FOR PUBLIC LAND, a
California nonprofit public benefit corporation

By Brian R. Kuchoff
Name: BRIAN R. KIRCHOFF
Its: REGIONAL COUNSEL

Initial Grantor:

TRUSTEES UNDER THE WILL AND OF
THE ESTATE OF JAMES CAMPBELL,
DECEASED, acting in their fiduciary and not
in their individual capacities

IN WITNESS WHEREOF, the undersigned have executed this instrument the day and year first above written.

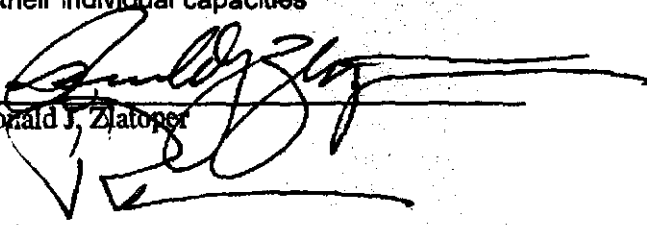
Grantee:

THE TRUST FOR PUBLIC LAND, a
California nonprofit public benefit corporation


Initial Grantor:

TRUSTEES UNDER THE WILL AND OF
THE ESTATE OF JAMES CAMPBELL,
DECEASED, acting in their fiduciary and not
in their individual capacities

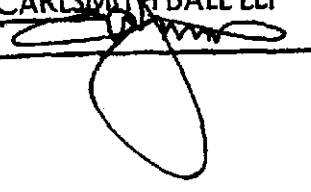
By _____
Name:
Its:



Ronald J. Zlatoper

Richard W. Gushman, II


C. R. Churchill

Approved as to Form
CARLSMITH BALL LLP
By 

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

SS:

On this 5th day of July, before me personally appeared ~~D.A. HEENAN, C.R. CHURCHILL, RICHARD W. GUSHMAN, II and RONALD J. ZLATOPER~~, the duly appointed, qualified and acting **TRUSTEES UNDER THE WILL AND OF THE ESTATE OF JAMES CAMPBELL, DECEASED**, acting in their fiduciary and not in their individual capacities, to me known to be the persons described in and who severally executed the foregoing instrument, and severally acknowledged that they executed the same as their free act and deed as such Trustees. r.p.

LS

Lydia L. Hannemann
 Name: Lydia L. Hannemann
 Notary Public, State of Hawaii

My commission expires: February 11, 2008

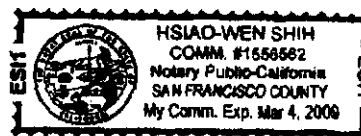
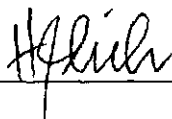
ACKNOWLEDGEMENT

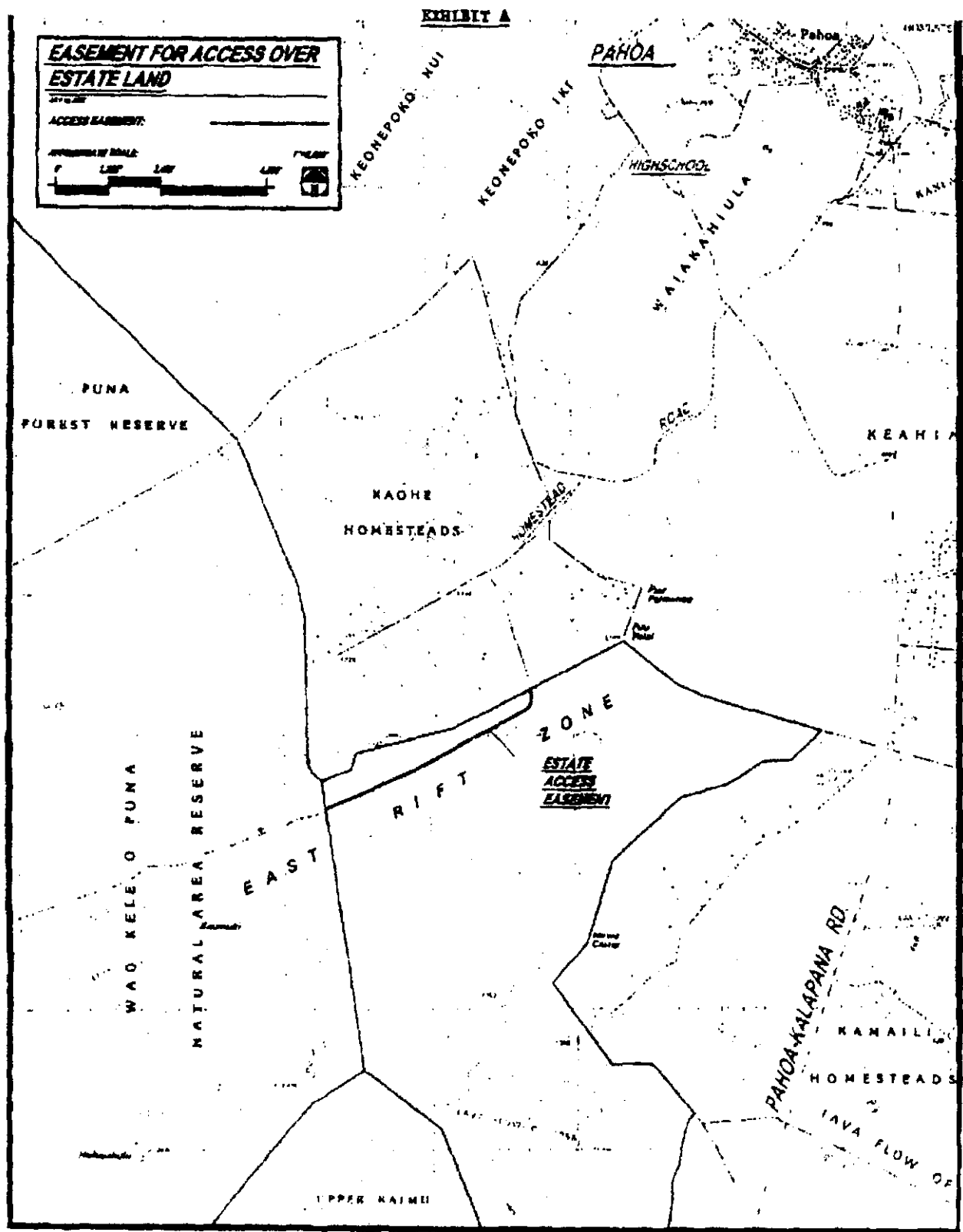
State of California
County of San Francisco

On this 11th day of July, 2006, before me, **Hsiao-Wen Shih**, a notary public, personally appeared **Brian R. Kirchoff** personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~) and that by his/~~her/their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

WITNESS my hand and official seal.

Signature





**EXHIBIT B
TO GRANT OF EASEMENT FOR ACCESS RIGHTS**

WAO KELE O PUNA PROPERTY DESCRIPTION

-PARCEL ONE:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Land Patent Grant Number S-15,666 to The Trustees under the Will and of the Estate of James Campbell, deceased) situate, lying and being at Puna, Island and County of Hawaii, State of Hawaii, being PARCEL A, same being portions of the Government Land of Makuu, Kaohe, Kaimu, Kehena, Kapaahu and Kamaili (C.S.F No. 20,315 dated December 13, 1985), and thus bounded and described as per survey of Raymond S. Nakamura, Land Surveyor, with the Survey Division, Department:

Beginning at the west corner of this parcel of land and on the south boundary of Land Court Application 1053, the coordinates of said point beginning referred to Government Survey Triangulation Station "OLAA" being 47,769.67 feet South and 8,228.41 feet West, thence running by azimuths measured clockwise from true South:

- | | | | | |
|-----|------|-----|-----|--|
| 1. | 240° | 05' | 12" | 24,288.19 feet along Land Court Application 1053; |
| 2. | 345° | 23' | 30" | 1,348.57 feet along the remainder of Government Lands; |
| 3. | 313° | 00' | | 1,221.60 feet along the remainder of Government Lands; |
| 4. | 330° | 16' | | 4,682.10 feet along the remainder of Government Lands; |
| 5. | 262° | 03' | | 1,960.70 feet along the remainder of Government Lands; |
| 6. | 290° | 02' | | 627.40 feet along the remainder of Government Lands; |
| 7. | 314° | 28' | | 4,581.80 feet along the remainder of Government Lands; |
| 8. | 314° | 47' | | 744.40 feet along the remainder of Government Lands; |
| 9. | 314° | 12' | | 735.30 feet along the remainder of Government Lands; |
| 10. | 315° | 31' | | 1,825.53 feet along the remainder of Government Lands; |
| 11. | 40° | 41' | | 13.81 feet along the north side of 20-Foot Road; |
| 12. | 338° | 15' | | 14.99 feet along the west side of 20-Foot Road; |
| 13. | 60° | 05' | 12" | 25,840.22 feet along Parcel B of Government Lands; |
| 14. | 140° | 23' | | 16,220.18 feet along Parcel B of Government Lands to the point of beginning and containing an area of 9,012 acres, more or less. |

-PARCEL TWO:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Land Patent Grant Number S-15,666 to The Trustees under the Will and of the Estate of James Campbell, deceased) situate, lying and being at Puna, Island and County of Hawaii, State of Hawaii, being PARCEL B, same being portions of Government Land of Makuu, Kaohe, Kaimu, Kehena, Kapaahu and Kamailli (C.S.F. No. 20,316 dated December 13, 1985), and thus bounded and described as per survey of Raymond S. Nakamura, Land Surveyor, with the Survey Division, Department:

Beginning at the west corner of this parcel of land and at an angle on the south boundary of Land Court Application 1053, the coordinates of said point of beginning referred to Government Survey Triangulation Station "OLAA" being 55,748.70 feet South and 22,096.90 feet West, thence running by azimuths measured clockwise from true South:

- | | | | | |
|-----|------|-----|-----|--|
| 1. | 240° | 05' | 12" | 16,000.00 feet along Land Court Application 1053; |
| 2. | 320° | 23' | | 16,220.18 feet along Parcel A of Government Lands; |
| 3. | 240° | 05' | 12" | 25,840.22 feet along Parcel A of Government Lands; |
| 4. | 338° | 15' | | 3,262.76 feet along the west side of the 20-Foot Road; |
| 5. | 340° | 23' | | 19.26 feet along the west side of the 20-Foot Road; |
| 6. | 342° | 31' | | 250.51 feet along the west side of the 20-Foot Road; |
| 7. | 337° | 27' | | 156.17 feet along the west side of the 20-Foot Road; |
| 8. | 347° | 14' | | 271.04 feet along the west side of the 20-Foot Road; |
| 9. | 348° | 38' | | 331.85 feet along the west side of the 20-Foot Road; |
| 10. | 353° | 51' | | 125.10 feet along the west side of the 20-Foot Road; |
| 11. | 359° | 30' | | 1,278.10 feet along the west side of the 20-Foot Road; |
| 12. | 358° | 59' | | 2,128.77 feet along the west side of the 20-Foot Road; |
| 13. | 332° | 38' | | 221.69 feet along the west side of the 20-Foot Road; |
| 14. | 315° | 33' | | 287.92 feet along the west side of the 20-Foot Road; |
| 15. | 258° | 17' | | 9.45 feet along the south side of the 20-Foot Road; |
| 16. | 352° | 29' | | 6,915.35 feet along Parcel C of Government Lands; |

- | | | | | |
|-----|------|-----|-----|---|
| 17. | 56° | 27' | | 1,460.60 feet along Lots 3-B and 3-A of Upper Kaimu Homesteads; |
| 18. | 39° | 38' | | 3,534.10 feet along Lot 3-A of Upper Kaimu Homesteads, Grant 6571 to K. Kamakani, Grant 6330 to S. Kamelamela and Grant 6328 to D. Kamelamela; |
| 19. | 53° | 04' | | 10,520.90 feet along Government Lands; |
| 20. | 53° | 31' | 30" | 9,863.30 feet along Grant 9275 to H. M. Holt, et al., Trustees under the Will and of the Estate of James Campbell, Deceased; |
| 21. | 148° | | 00' | 4,100.00 feet along R.P. 8030, L.C.Aw. 8559-B, Ap. 14 to William C. Lunalilo; |
| 22. | 116° | | 00' | 8,150.00 feet along R.P. 8030, L.C.Aw. 8559-B, Ap. 14 to William C. Lunalilo; |
| 23. | 126° | 59' | | 25,105.30 feet along R.P. 8030, L.C.Aw. 8559-B, Ap. 14 to William C. Lunalilo to the point of beginning and containing an area of 16,843.891 acres, more or less. |

SUBJECT, HOWEVER, as to PARCELS ONE and TWO above, to the following:

1. Terms, provisions covenants, conditions and reservations contained in Land Patent Grant Number S-15,666, including, but not limited to, matters relating to reservation of minerals, water and prehistoric and historic remains.

2. Final Judgment; Exhibits "A" and "B" dated August 26, 2002, filed in the Circuit Court of the Third Circuit, State of Hawaii, 89-089, on August 26, 2002, and recorded in the Bureau of Conveyances of the State of Hawaii on September 16, 2002 as Document No. 2002-163259, against the Estate of James Campbell, Deceased; W.H. McVay and P.R. Cassiday, in their fiduciary capacity as Trustees under the Will and the Estate of James Campbell, in favor of Pele Defense Fund.

Tax Map Keys: Hawaii 1-2-10-2 (PARCEL ONE)
Hawaii 1-2-10-3 (PARCEL TWO)

End of Exhibit B

**EXHIBIT C
TO GRANT OF EASEMENT FOR ACCESS RIGHTS**

PROPERTY DESCRIPTION

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Land Patent Grant Number S-15,666 to The Trustees under the Will and of the Estate of James Campbell, deceased) situate, lying and being at Puna, Island and County of Hawaii, State of Hawaii, being PARCEL C, same being portions of the Government Land of Kamaile, Kahena and Kikala (C.S.F No. 20,317 dated December 13, 1985), and thus bounded and described as per survey dated December 13, 1985, to wit:

Beginning at the east corner of this parcel of land, on the south boundary of Royal Patent 4475, Land Patent 8199, Land Commission Award 7713, Apana 13 to V. Kamamalu and at the north corner of Grant 7365 to J. K. Pau, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALI" being 115.60 feet south and 9,325.70 feet west, thence running by azimuths measured clockwise from true South:

- | | | | | |
|-----|------|-----|----------|--|
| 1. | 46° | 00' | 982.00 | feet along Grant 7365 to J. K. Pau; |
| 2. | 85° | 00' | 652.00 | feet along Grant 7365 to J. K. Pau; |
| 3. | 58° | 45' | 1,050.00 | feet along Grant 7365 to J. K. Pau; |
| 4. | 73° | 30' | 1,005.00 | feet along Grant 7547 to Wm. K. Kelihoomalu; |
| 5. | 45° | 46' | 1,197.50 | feet along Grant 7547 to Wm. K. Kelihoomalu; |
| 6. | 139° | 03' | 50.08 | feet along the north side of 50-Foot Road; |
| 7. | 45° | 46' | 1,064.16 | feet along the west side of 50-Foot Road; |
| 8. | 16° | 10' | 2,051.31 | feet along the west side of 50-Foot Road; |
| 9. | 38° | 34' | 1,319.67 | feet along the west side of 50-Foot Road; |
| 10. | 323° | 16' | 2,381.65 | feet along the south side of 50-Foot Road; |
| 11. | 270° | 00' | 981.59 | feet along the south side of 50-Foot Road; |
| 12. | 316° | 30' | 1,493.59 | feet along the south side of 50-Foot Road to the northwest side of Upper Puna Road; |
| 13. | | | | Thence along the northwest side of Upper Puna Road, the direct azimuth and distance being: |
| | 27° | 43' | 20" | 4,458.54 feet; |

- | | | | | | |
|-----|------|-----|-----|----------|--|
| 14. | 55° | 41' | 15" | 171.71 | feet along the northwest side of Upper Puna Road; |
| 15. | | | | | Thence along the northwest side of Upper Puna Road on a curve to the right with a radius of 150.00 feet, the chord azimuth and distance being: |
| | 79° | 01' | 15" | 118.81 | feet; |
| 16. | 102° | 21' | 15" | 518.59 | feet along the northwest side of Upper Puna Road; |
| 17. | | | | | Thence along the northwest side of Upper Puna Road on a curve to the left with a radius of 250.00 feet, the chord azimuth and distance being: |
| | 77° | 01' | 15" | 213.94 | feet; |
| 18. | 51° | 41' | 15" | 284.74 | feet along the northwest side of Upper Puna Road; |
| 19. | | | | | Thence along the northwest side of Upper Puna Road on a curve to the right with a radius of 475.00 feet, the chord azimuth and distance being: |
| | 55° | 01' | 15" | 55.24 | feet; |
| 20. | 58° | 21' | 15" | 354.39 | feet along the northwest side of Upper Puna Road; |
| 21. | | | | | Thence along the northwest side of Upper Puna Road on a curve to the left with a radius of 450.00 feet, the chord azimuth and distance being: |
| | 50° | 46' | 15" | 118.77 | feet; |
| 22. | 135° | 50' | | 1,250.91 | feet along Grant 7731 to L. K. Swain; |
| 23. | 157° | 30' | | 3,467.50 | feet along Grant 7593 to Louisa Swain, Grant 7478 to L. E. Blaisdell and the northwest end of 50-Foot Road; |
| 24. | 127° | 35' | | 2,173.00 | feet along Lot III-B of Upper Kaimu Homesteads; |
| 25. | 172° | 29' | | 6,915.35 | feet along Parcel B of Government Lands; |

26.	258°	17'	139.94	feet along the south side of 20-Foot Road;
27.	244°	12'	614.60	feet along the south side of 20-Foot Road;
28.	195°	08'	397.80	feet along the south side of 20-Foot Road;
29.	254°	12'	783.69	feet along the south side of 20-Foot Road;
30.	254°	05'	1,202.89	feet along the south side of 20-Foot Road;
31.	254°	48'	283.02	feet along the south side of 20-Foot Road;
32.	242°	35'	876.64	feet along the south side of 20-Foot Road;
33.	245°	28'	581.05	feet along the south side of 20-Foot Road;
34.	242°	17'	539.85	feet along the south side of 20-Foot Road;
35.	246°	20'	20.81	feet along the south side of 20-Foot Road;
36.	240°	31'	1,658.87	feet along the south side of 20-Foot Road;
37.	240°	47'	707.62	feet along the south side of 20-Foot Road;
38.	309°	05'	1,550.70	feet along R. P. 4475, R. P. 6883, L. P. 8200, L. C. Aw. 7713, Ap. 14 to V. Kamamalu;
39.	296°	22'	753.00	feet along R. P. 4475, R. P. 6883, L. P. 8200, L. C. Aw. 7713, Ap. 14 to V. Kamamalu;
40.	286°	00'	2,750.00	feet along R. P. 4475, L. P. 8199, L. C. Aw. 7713, Ap. 13 Kamamalu to the point of beginning and containing an area of 1,930 acres, more or less.

Tax Map Key: Hawaii 1-2-10-1

End of Exhibit C

RECORDER'S MEMO
Document Text NOT Legible For Digital Imaging



R-885 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
JUL 14, 2006 09:00 AM
Doc No(s) 2006-129683



/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

CTax (30): \$10950.00

20 4/8 Z9

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail (X) Pickup () To:

Office of Hawaiian Affairs
711 Kapi'olani Blvd., Suite 500
Honolulu, HI 96813
Attn: Clyde W. Nāmu'o, Administrator

TGOH 200527898B-5
TGES A6-101-0915
BARBARA PAULO

Total Number of Pages:

TMK Nos. (3) 1-2-010-002 and 003
[Grant of Access Easement burdens TMK No. (3) 1-2-010-001
and benefits TMK Nos. (3) 1-2-010-002 and 003]

WARRANTY DEED AND GRANT OF ACCESS EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

THAT, effective as of the ___ day of _____, 2006, **THE TRUST FOR PUBLIC LAND**, a California nonprofit public benefit corporation, whose address is 116 New Montgomery Street Third Floor San Francisco, California 94105, hereinafter referred to as "Grantor" and the **OFFICE OF HAWAIIAN AFFAIRS**, a body corporate and instrumentality of the State of Hawai'i, whose address is 711 Kapi'olani Boulevard, Suite 500, Honolulu, Hawai'i 96813, hereinafter referred to as the "Grantee," for a valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby grant, bargain, sell and convey unto Grantee, its successors, assigns and representatives, in fee simple, those certain parcels of land situate at Puna, Island and County of Hawaii, State of Hawai'i, designated as "Wao Kele o Puna," containing an area of $\pm 25,855.891$ acres, more particularly described in Exhibit "A" attached hereto and made a part hereof.

TOGETHER WITH a non-exclusive easement for access purposes granted to The Trust for Public Land, a California nonprofit public benefit corporation by C.R. Churchill, D.A. Heenan, Richard W. Gushman, II and Ronald J. Zlatoper, the duly appointed, qualified and acting Trustees Under The Will And Of The Estate Of James Campbell, Deceased, acting in their fiduciary and not in their individual capacities, by that certain Grant of Easement for Access Rights made as of July 14, 2006 and recorded in the Bureau of Conveyances of the State of Hawai'i ("Bureau of Conveyances") on July 14, 2006 as Document Number 2006-129681, over, across and through the road shown on the map attached hereto as Exhibit C-1 and incorporated herein by reference, which crosses the property described in Exhibit C-2 attached hereto and incorporated herein by reference, for the benefit of both Tax Map Key Nos. (3) 1-2-010-002 and 003, subject to the terms and conditions set forth therein.

AND the reversions, remainders, rents, income and profits thereof, and all of the estate, right, title, and interest of the Grantor, both at law and in equity, therein and thereto.

TO HAVE AND TO HOLD the same, together with all improvements, rights, easements, privileges and appurtenances thereunto belonging or in any ways appertaining or held and enjoyed therewith in fee simple unto said Grantee, the Grantee's successors and assigns, forever, free and clear of all liens and encumbrances except as described on Exhibit "B" attached hereto.

The Grantor, for itself, its successors and assigns, does hereby covenant with the Grantee, its successors and assigns, that the Grantor is lawfully seised in fee simple and possessed of the above-described land and premises, that it has a good and lawful right to convey the same as aforesaid, that the same is free and clear of all liens and encumbrances, except as noted on Exhibit "B" and that it will and its successors and assigns, shall WARRANT AND DEFEND the same unto the Grantee, its successors and assigns, forever, against the claims and demands of all persons whomsoever.

AND the undersigned hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same instrument, binding all of the parties hereto, notwithstanding that all of the parties are not signatories to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate, unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the parties have executed this instrument as of 11th
day of July, 2006, effective as of the day, month, and year first above written.

Grantor:

THE TRUST FOR PUBLIC LAND, a
California nonprofit corporation

By Bern R. Kuehl

Its REGIONAL COUNSEL

Grantee:

OFFICE OF HAWAIIAN AFFAIRS, a
body corporate and instrumentality of the
State of Hawai'i

By: _____
S. Haunani Apoliona
Its Chairperson

By: _____
Clyde W. Nāmu'o
Its Administrator

APPROVED AS TO FORM:

Ernest M. Kimoto
Senior Staff Attorney
Office of Hawaiian Affairs

IN WITNESS WHEREOF, the parties have executed this instrument as of 1st
day of July, 2006, effective as of the day, month, and year first above written.

Grantor:

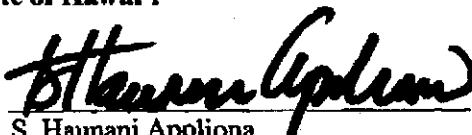
**THE TRUST FOR PUBLIC LAND, a
California nonprofit corporation**

By _____

Its _____

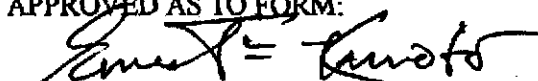
Grantee:

**OFFICE OF HAWAIIAN AFFAIRS, a
body corporate and instrumentality of the
State of Hawai'i**

By: 
S. Haunani Apoliona
Its Chairperson

By: 
Clyde W. Nāmu'o
Its Administrator

APPROVED AS TO FORM:


Ernest M. Kimoto
Senior Staff Attorney
Office of Hawaiian Affairs

ACKNOWLEDGEMENT

State of California
County of San Francisco

On this 11th day of July, 2006, before me, **Hsiao-Wen Shih**, a notary public, personally appeared **Brian R. Kirchoff** personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~~~they~~ executed the same in his/~~her~~~~their~~ authorized capacity(ies) and that by his/~~her~~~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature 



ACKNOWLEDGEMENT

State of Hawai'i)
) ss.
City and County of Honolulu)

On this 12th day of July, 2006, before me, personally appeared S. HAUNANI APOLIONA, to me known, who being by me duly sworn, did say that she is the Chairperson of the Board of Trustees of the Office of Hawaiian Affairs, a body corporate and instrumentality of the State of Hawai'i, and that in the absence of a seal that the foregoing instrument was signed on behalf of said Office of Hawaiian Affairs by authority of its Board of Trustees, and the said S. HAUNANI APOLIONA acknowledged said instrument to be the free act and deed of said Office of Hawaiian Affairs.

Notary Public, State of Hawai'i

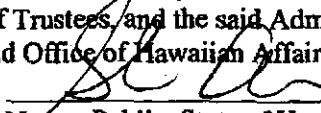
Print Name: J. E. Okamoto

My commission expires: 5/29/10

ACKNOWLEDGEMENT

State of Hawai'i)
)
City and County of Honolulu) ss.

On this 12th day of July, 2006, before me, personally appeared CLYDE W. NĀMU'O, to me known, who being by me duly sworn, did say that he is the Administrator of the Office of Hawaiian Affairs, a body corporate and instrumentality of the State of Hawai'i and that in the absence of a seal that the foregoing instrument was signed on behalf of said Office of Hawaiian Affairs by authority of its Board of Trustees, and the said Administrator acknowledged said instrument to be free act and deed of said Office of Hawaiian Affairs.



Notary Public, State of Hawai'i

Print Name: S. E. Okamoto

LJ

My commission expires: 5/29/10

EXHIBIT "A"

PARCEL FIRST [TMK NO. (3) 1-2-010-002]:

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Land Patent Grant Number S-15,666 to The Trustees under the Will and of the Estate of James Campbell, deceased) situate, lying and being at Puna, Island and County of Hawaii, State of Hawaii, being PARCEL A, same being portions of the Government Land of Makuu, Kahohe, Kaimu, Kehena, Kapaahu and Kamaili (C.S.F No. 20,315 dated December 13, 1985), and thus bounded and described as per survey dated December 13, 1985, to wit:

Beginning at the west corner of this parcel of land and on the south boundary of Land Court Application 1053, the coordinates of said point beginning referred to Government Survey Triangulation Station "OLAA" being 47,769.67 feet south and 8,228.41 feet west, thence running by azimuths measured clockwise from true South:

1. 240° 05' 12" 24,288.19 feet along Land Court Application 1053;
2. 345° 23' 30" 1348.57 feet along the remainder of Government Lands;
3. 313° 00' 1221.60 feet along the remainder of Government Lands;
4. 330° 16' 4682.10 feet along the remainder of Government Lands;
5. 262° 03' 1960.70 feet along the remainder of Government Lands;
6. 290° 02' 627.40 feet along the remainder of Government Lands;
7. 314° 28' 4581.80 feet along the remainder of Government Lands;
8. 314° 47' 744.40 feet along the remainder of Government Lands;
9. 314° 12' 735.30 feet along the remainder of Government Lands;
10. 315° 31' 1825.53 feet along the remainder of Government Lands;
11. 40° 41' 13.81 feet along the north side of 20-Foot Road;
12. 338° 15' 14.99 feet along the west side of 20-Foot Road;
13. 60° 05' 12" 25,840.22 feet along Parcel B of Government Lands;
14. 140° 23' 16,220.18 feet along Parcel B of Government Lands to the point of beginning and containing an area of 9,012 acres, more or less.

PARCEL SECOND [TMK NO. (3) 1-2-010-003]:

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Land Patent Grant Number S-15,666 to The Trustees under the Will and of the Estate of James Campbell, deceased) situate, lying and being at Puna, Island and County of Hawaii, State of Hawaii, being PARCEL B, same being portions of Government Land of Makuu, Kaohe, Kaimu, Kehena, Kapaahu and Kamaili (C.S.F. No. 20,316 dated December 13, 1985), and thus bounded and described as per survey dated December 13, 1985, to wit:

Beginning at the west corner of this parcel of land and at an angle on the south boundary of Land Court Application 1053, the coordinates of said point of beginning referred to Government Survey Triangulation Station "OLAA" being 55,748.70 feet south and 22,096.90 feet west, thence running by azimuths measured clockwise from true South:

1. 240° 05' 12" 16,000.00 feet along Land Court Application 1053;
2. 320° 23' 16,220.18 feet along Parcel A of Government Lands;
3. 240° 05' 12" 25,840.22 feet along Parcel A of Government Lands;
4. 338° 15' 3262.76 feet along the west side of the 20-Foot Road;
5. 340° 23' 19.26 feet along the west side of the 20-Foot Road;
6. 342° 31' 250.51 feet along the west side of the 20-Foot Road;
7. 337° 27' 156.17 feet along the west side of the 20-Foot Road;
8. 347° 14' 271.04 feet along the west side of the 20-Foot Road;
9. 348° 38' 331.85 feet along the west side of the 20-Foot Road;
10. 353° 51' 125.10 feet along the west side of the 20-Foot Road;
11. 359° 30' 1278.10 feet along the west side of the 20-Foot Road;
12. 358° 59' 2128.77 feet along the west side of the 20-Foot Road;
13. 332° 38' 221.69 feet along the west side of the 20-Foot Road;
14. 315° 33' 287.92 feet along the west side of the 20-Foot Road;
15. 258° 17' 9.45 feet along the south side of the 20-Foot Road;
16. 352° 29' 6915.35 feet along Parcel C of Government Lands;

- | | | | | |
|-----|------|---------|-----------|---|
| 17. | 56° | 27' | 1460.60 | feet along Lots 3-B and 3-A of Upper Kaimu Homesteads; |
| 18. | 39° | 38' | 3534.10 | feet along Lot 3-A of Upper Kaimu Homesteads, Grant 6571 to K. Kamakani, Grant 6330 to S. Kamelamela and Grant 6328 to D. Kamelamela; |
| 19. | 53° | 04' | 10,520.90 | feet along Government Lands; |
| 20. | 53° | 31' 30" | 9863.30 | feet along Grant 9275 to H. M. Holt, et al., Trustees under the Will and of the Estate of James Campbell, Deceased; |
| 21. | 148° | 00' | 4100.00 | feet along R.P. 8030, L.C.Aw. 8559-B, Ap. 14 to William C. Lunalilo; |
| 22. | 116° | 00' | 8150.00 | feet along R.P. 8030, L.C.Aw. 8559-B, Ap. 14 to William C. Lunalilo; |
| 23. | 126° | 59' | 25,105.30 | feet along R.P. 8030, L.C.Aw. 8559-B, Ap. 14 to William C. Lunalilo to the point of beginning and containing an area of 16,843.891 acres, more or less. |

BEING A PORTION OF THE LANDS ACQUIRED BY TRUSTEES' LIMITED WARRANTY DEED

GRANTOR: C.R. CHURCHILL, D.A. HEENAN, RICHARD W. GUSHMAN, II and RONALD J. ZLATOPER, the duly appointed, qualified and acting TRUSTEES UNDER THE WILL AND OF THE ESTATE OF JAMES CAMPBELL, DECEASED

GRANTEE: THE TRUST FOR PUBLIC LAND, a California nonprofit public benefit corporation

DATED: July 11 2006
RECORDED: Document No. 2006- 129680

EXHIBIT "B"

PERMITTED ENCUMBRANCES

1. Any lien for real property taxes not yet delinquent [Tax Map Key Nos. (3) 1-2-010-002 and 003].

2. AS TO PARCEL FIRST [TMK NO. (3) 1-2-010-002] ONLY:

- (A) Puna Forest Reserve as shown on the tax map.
- (B) The land has no recorded access to a public roadway.

3. AS TO PARCELS FIRST AND SECOND:

- (A) INSTRUMENT: LAND PATENT GRANT NUMBER S-15,666

DATED: February 27, 1987

The foregoing includes, but is not limited to, matters relating to reservation of minerals, water and prehistoric and historic remains.

- (B) FINAL JUDGMENT; EXHIBITS "A" AND "B"

AGAINST: THE ESTATE OF JAMES CAMPBELL, DECEASED;
W.H. MCVAY AND P.R. CASSIDAY, in their fiduciary
capacity as Trustees under the Will and of the Estate of
James Campbell

IN FAVOR OF: PELE DEFENSE FUND

DATED: August 26, 2002

FILED: Circuit Court of the Third Circuit, State of Hawaii, 89-089,
on August 26, 2002

RECORDED: Document No. 2002-163259 on September 16, 2002

- (C) Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.

(D) Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

(E) UNRECORDED LICENSE

LESSOR: C. R. CHURCHILL, D. A. HEENAN, RICHARD W. GUSHMAN, II, and RONALD J. ZLATOPER, Trustees under the Will and of the Estate of James Campbell, deceased

LESSEE: STATE OF HAWAII, Department of Land and Natural Resources

DATED: September 9, 1996, effective February 1, 1996

As amended by that certain unrecorded First Amendment of License dated as of December 13, 2005, of which a Memorandum of License dated as of December 13, 2005, recorded as Document No. 2005-256550.

PARTIAL ASSIGNMENT OF LICENSOR'S INTEREST IN LICENSE (OLSON) dated as of December 19, 2005 ("Effective Date"), recorded as Document No. 2006-010986, by and among C.R. CHURCHILL, D.A. HEENAN, RICHARD W. GUSHMAN, II and RONALD J. ZLATOPER, TRUSTEES UNDER THE WILL AND OF THE ESTATE OF JAMES CAMPBELL, DECEASED (the "Licensor" or "Assignor"), THE STATE OF HAWAII, DEPARTMENT OF LAND AND NATURAL RESOURCES (the "Licensee"), and EDMUND C. OLSON, as Trustee of the EDMUND C OLSON TRUST NO. 2. under agreement dated August 21, 1985 ("Assignee") [AFFECT OTHER LANDS].

PARTIAL ASSIGNMENT OF LICENSOR'S INTEREST IN LICENSE (TPL) dated as of July 14, 2006, recorded as Document No. 2006-129682, by and among C.R. CHURCHILL, D.A. HEENAN, RICHARD W. GUSHMAN, II and RONALD J. ZLATOPER, TRUSTEES UNDER THE WILL AND OF THE ESTATE OF JAMES CAMPBELL, DECEASED (the "Licensor" or "Assignor"), THE STATE OF HAWAII, DEPARTMENT OF LAND AND NATURAL RESOURCES (the "Licensee"), and THE TRUST FOR PUBLIC LAND, a California nonprofit public benefit corporation ("Assignee").

- (F) The restrictions, covenants, reservations, limitations, conditions and agreements contained in the following:

INSTRUMENT: TRUSTEES' LIMITED WARRANTY DEED

DATED: July 11, 2006

RECORDED: Document No. 2006- 129680

EASEMENT FOR ACCESS OVER
ESTATE LAND

1174

ACCESS/EASEMENT:

APPROXIMATE SCALE:



EXHIBIT C-2

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Land Patent Grant Number S-15,666 to The Trustees under the Will and of the Estate of James Campbell, deceased) situate, lying and being at Puna, Island and County of Hawaii, State of Hawaii, being PARCEL C, same being portions of the Government Land of Kamaile, Kahena and Kikala (C.S.F No. 20,317 dated December 13, 1985), and thus bounded and described as per survey dated December 13, 1985, to wit:

Beginning at the east corner of this parcel of land, on the south boundary of Royal Patent 4475, Land Patent 8199, Land Commission Award 7713, Apana 13 to V. Kamamalu and at the north corner of Grant 7365 to J. K. Pau, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALIUI" being 115.60 feet south and 9,325.70 feet west, thence running by azimuths measured clockwise from true South:

1.	46° 00'	982.00	feet along Grant 7365 to J. K. Pau;
2.	85° 00'	652.00	feet along Grant 7365 to J. K. Pau;
3.	58° 45'	1050.00	feet along Grant 7365 to J. K. Pau;
4.	73° 30'	1005.00	feet along Grant 7547 to Wm. K. Keliihoomalu;
5.	45° 46'	1197.50	feet along Grant 7547 to Wm. K. Keliihoomalu;
6.	139° 03'	50.08	feet along the north side of 50-Foot Road;
7.	45° 46'	1064.16	feet along the west side of 50-Foot Road;
8.	16° 10'	2051.31	feet along the west side of 50-Foot Road;
9.	38° 34'	1319.67	feet along the west side of 50-Foot Road;

10. 323° 16' 2381.65 feet along the south side of 50-Foot Road;
11. 270° 00' 981.59 feet along the south side of 50-Foot Road;
12. 316° 30' 1493.59 feet along the south side of 50-Foot Road to the northwest side of Upper Puna Road;
13. Thence along the northwest side of Upper Puna Road, the direct azimuth and distance being:
27° 43' 20" 4458.54 feet;
14. 55° 41' 15" 171.71 feet along the northwest side of Upper Puna Road;
15. Thence along the northwest side of Upper Puna Road on a curve to the right with a radius of 150.00 feet, the chord azimuth and distance being:
79° 01' 15" 118.82 feet;
16. 102° 21' 15" 518.59 feet along the northwest side of Upper Puna Road;
17. Thence along the northwest side of Upper Puna Road on a curve to the left with a radius of 250.00 feet, the chord azimuth and distance being:
77° 01' 15" 213.94 feet;
18. 51° 41' 15" 284.74 feet along the northwest side of Upper Puna Road;
19. Thence along the northwest side of Upper Puna Road on a curve to the right with a radius of 475.00 feet, the chord azimuth and distance being:

	55°	01'	15"	55.24	feet;
20.	58°	21'	15"	354.39	feet along the northwest side of Upper Puna Road;
21.	Thence along the northwest side of Upper Puna Road on a curve to the left with a radius of 450.00 feet, the chord azimuth and distance being:				
	50°	46'	15"	118.77	feet;
22.	135°	50'		1250.91	feet along Grant 7731 to L. K. Swain;
23.	157°	30'		3467.50	feet along Grant 7593 to Louisa Swain, Grant 7478 to L. E. Blaisdell and the northwest end of 50-Foot Road;
24.	127°	35'		2173.00	feet along Lot III-B of Upper Kaimu Homesteads;
25.	172°	29'		6915.35	feet along Parcel B of Government Lands;
26.	258°	17'		139.94	feet along the south side of 20-Foot Road;
27.	244°	12'		614.60	feet along the south side of 20-Foot Road;
28.	195°	08'		397.80	feet along the south side of 20-Foot Road;
29.	254°	12'		783.69	feet along the south side of 20-Foot Road;
30.	254°	05'		1202.89	feet along the south side of 20-Foot Road;
31.	254°	48'		283.02	feet along the south side of 20-Foot Road;

32.	242°	35'	876.64	feet along the south side of 20-Foot Road;
33.	245°	28'	581.05	feet along the south side of 20-Foot Road;
34.	242°	17'	539.85	feet along the south side of 20-Foot Road;
35.	246°	20'	20.81	feet along the south side of 20-Foot Road;
36.	240°	31'	1658.87	feet along the south side of 20-Foot Road;
37.	240°	47'	707.62	feet along the south side of 20-Foot Road;
38.	309°	05'	1550.70	feet along R. P. 4475, R. P. 6883, L. P. 8200, L. C. Aw. 7713, Ap. 14 to V. Kamamalu;
39.	296°	22'	753.00	feet along R. P. 4475, R. P. 6883, L. P. 8200, L. C. Aw. 7713, Ap. 14 to V. Kamamalu;
40.	286°	00'	2750.00	feet along R. P. 4475, L. P. 8199, L. C. Aw. 7713, Ap. 13 to V. Kamamalu to the point of beginning and containing an area of 1,930 acres, more or less.

1. Real Property Taxes have been fully paid up to and including June 30, 2006. (see tax statement attached)

Tax Key: (3) 1-2-010-001 Area Assessed: 1,930.000 acres

-Note:- Attention is invited to the fact that the premises covered herein may be subject to possible rollback or retroactive property taxes.

2. Any trails or rights-of-way, claims to which may be predicated upon prescriptive use or ancient Hawaiian use or custom.

3. The terms and provisions contained in the following:

INSTRUMENT : LAND PATENT GRANT NUMBER S-15,666

DATED : February 27, 1987

The foregoing includes, but is not limited to, matters relating to reservation of minerals, water and prehistoric and historic remains.

4. FINAL JUDGMENT; EXHIBITS "A" AND "B"

AGAINST : THE ESTATE OF JAMES CAMPBELL, DECEASED; W.H. MCVAY AND P.R. CASSIDAY, in their fiduciary capacity as Trustees under the Will and the Estate of James Campbell

IN FAVOR OF: PELE DEFENSE FUND

DATED : August 26, 2002

FILED : Circuit Court of the Third Circuit, State of Hawaii, Civil No. 89-089 (Hilo), on August 26, 2002

RECORDED : Document No. 2002-163259 on September 16, 2002

5. UNRECORDED LICENSE

LICENSOR : TRUSTEES UNDER THE WILL AND OF THE ESTATE OF JAMES CAMPBELL, DECEASED

LICENSEE : STATE OF HAWAII, DEPARTMENT OF LAND AND NATURAL RESOURCES

DATED : September 9, 1996

As amended by the certain unrecorded First Amendment of License dated as of December 13, 2005, of which a Memorandum of License dated as of December 13, 2005, recorded as Document No. 2005-256550.

PARTIAL ASSIGNMENT OF LICENSOR'S INTEREST IN LICENSE (OLSON) dated as of December 19, 2005 ("Effective Date"), recorded as Document No. 2006-010986, by and among the TRUSTEES UNDER THE WILL AND OF THE ESTATE OF JAMES CAMPBELL, DECEASED, acting in their fiduciary and not in their individual capacities ("Licensor" or "Assignor"), THE STATE OF HAWAII, DEPARTMENT OF LAND AND NATURAL RESOURCES ("Licensee"), and EDMUND C. OLSON, as Trustee of the EDMUND C. OLSON TRUST NO. 2 under agreement dated August 21, 1985 ("Assignee").

6. The terms and provisions contained in the following:

INSTRUMENT : TRUSTEES' LIMITED WARRANTY DEED WITH COVENANTS

DATED : ----- (acknowledged December 20, 2005)

RECORDED : Document No. 2006-010985

The foregoing includes, but is not limited to, matters relating to Grantor's reserved right of a perpetual nonexclusive access (vehicular and pedestrian) easement.

7. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.



R-882 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
JUL 14, 2006 09:00 AM
Doc No(s) 2006-129680



/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

20 1/8 Z9

CTax (30): \$10950.00

LAND COURT

REGULAR SYSTEM

Return By Mail ☐ Pick-Up ☐ To:

MS. HSIAO-WEN SHIH
THE TRUST FOR PUBLIC LAND
116 NEW MONTGOMERY ST
THIRD FLR
SAN FRANCISCO, CA 94105

TGOH 200527898
TGES A5-101-1630
BARBARA PAULO

TITLE OF DOCUMENT:

TRUSTEES' LIMITED WARRANTY DEED

PARTIES TO DOCUMENT:

GRANTORS: C.R. CHURCHILL, D.A. HEENAN, RICHARD W. GUSHMAN, II and RONALD J. ZLATOPER, the duly appointed, qualified and acting TRUSTEES UNDER THE WILL AND OF THE ESTATE OF JAMES CAMPBELL, DECEASED, acting in their fiduciary and not in their individual capacities

GRANTEE: THE TRUST FOR PUBLIC LAND, a California nonprofit public benefit corporation

TAX MAP KEY(S): Hawaii 1-2-10-2 (This document consists of 16 pages.)
Hawaii 1-2-10-3
Hawaii 1-1-1-16
Hawaii 1-1-1-17
Hawaii 1-1-1-20

TRUSTEES' LIMITED WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

That C.R. CHURCHILL, D.A. HEENAN, RICHARD W. GUSHMAN, II and RONALD J. ZLATOPER, the duly appointed, qualified and acting TRUSTEES UNDER THE WILL AND OF THE ESTATE OF JAMES CAMPBELL, DECEASED, acting in their fiduciary and not in their individual capacities (the "Grantors"), whose principal place of business and mailing address is 1001 Kamokila Boulevard, Kapolei, Hawaii 96707, in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other valuable consideration previously paid to Grantors by THE TRUST FOR PUBLIC LAND, a California nonprofit public benefit corporation (the "Grantee"), whose principal place of business and mailing address is The Trust For Public Land National Office, 116 New Montgomery St., 4th Floor, San Francisco, CA 94105, the receipt and sufficiency of which is hereby acknowledged by the Grantors, and upon and subject to the covenants and conditions herein set forth, do hereby GRANT, BARGAIN, SELL, and CONVEY unto Grantee, its successors and assigns, forever, that certain parcel of real estate (the "Property") situated at Puna, Island and County of Hawaii, State of Hawaii, and more particularly described in Exhibit A attached hereto and made a part hereof, subject to the reservations and encumbrances herein and in Exhibit A attached hereto and made a part hereof:

1. Property in "As Is, Where Is" Condition.

a. No Warranties. It is expressly understood and agreed that Grantors have not made any representation or warranty, express or implied, regarding any aspect of the Property including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose, suitability, habitability, quality, physical condition and value, and Grantors hereby disclaim any and all liability for any and all such representations and warranties. Grantee agrees that it has examined and investigated the Property prior to the execution of this instrument and that Grantee has relied solely upon such examinations and investigations in acquiring the Property. Without limiting the generality of the foregoing, Grantee acknowledges that (i) it has made all inspections, investigations and analyses deemed necessary or appropriate to determine compliance by the Property with all environmental or other applicable laws that may apply to the Property and (ii) Grantors have made no representation or warranty, express or implied, concerning the Property's compliance with environmental or other applicable laws.

b. "As Is" Condition. Grantee acknowledges and agrees that it is acquiring the Property in its "as is, where is" condition, with all faults, if any, and that Grantee has assumed all risks regarding all aspects of the Property, and the condition thereof, including, without limitation: (i) the risk of any physical condition affecting the Property including, without limitation, the existence of any hazardous materials, the existence of any soils or environmental conditions, or the existence of archeological or historical conditions on the Property; (ii) the risk of any damage or loss to the Property caused by any means including, without limitation, flood or earthquake; and (iii) the risk of use, zoning, habitability, merchantability or quality of the Property or the suitability of the Property for its present use or future development; and (iv) the activities of Grantors and others on adjacent or other nearby lands.

2.

c. Release. Grantee expressly releases Grantors, their successors, successors in trust and assigns, from any and all liability and claims that Grantee, its successors and assigns may have against Grantors, their successors, successors in trust and assigns with regard to: (i) known Hazardous Materials (as defined in paragraph 4) existing on the Property on or before the recordation date of which Grantee is actually aware, (ii) Hazardous Materials released, leaked, spilled, overflow, discharged or emitted on or from the Property at any time from and after the recordation date, or otherwise resulting from occupancy or operation of the Property by Grantee or by Grantee's agents, and (iii) Hazardous Materials migrating, entering or leaking onto, above or beneath the Property at any time from and after the recordation date from any adjoining or nearby land over which Grantor has released its possessory interest and control (through ground lease, license, easement or otherwise) or in which Grantor has no ownership interest. Grantee agrees to incorporate such release of Grantors, their successors, successors in trust and assigns in all subsequent conveyances of all or a portion of the Property. Grantor acknowledges that the foregoing release does not extend to liability and claims for personal injury or property damage that are based on tort law.

d. Indemnity. Grantee shall be responsible, to the extent permitted by law, for damages or injuries caused by the Grantee or its employees in the scope of their employment that occur at any time on or after the recordation date, as a direct or indirect result of or in connection with Hazardous Materials caused or permitted by Grantee or by Grantee's employees at any time on or after the recordation date to be released, leaked, spilled, overflowed, discharged or emitted on or from the Property, or otherwise resulting from occupancy or operation of the Property by Grantee or by Grantee's employees, provided that Grantee's liability for such damage or injury has been determined by a court or agreed to by the Grantee. If Grantee is a governmental entity of the State of Hawaii, the Grantee shall pay for such damage and injury provided that funds are appropriated by the Hawaii State Legislature and allotted for that purpose. Grantee's obligations contained in this section shall not be construed in any form or manner to apply to clean up of, or any consequential damages related to any contamination resulting from or attributable to: (i) any unknown Hazardous Materials existing on the Property on or before the recordation date; or (ii) any Hazardous Materials migrating, entering or leaching onto, above, or beneath the Property at any time from and after the recordation date from any adjoining or nearby land over which Grantee has no control or in which Grantee has no ownership interest. Grantee shall be responsible for establishing that condition (i) or (ii) set forth in the immediately preceding sentence is applicable, so as to relieve Grantee of its obligations under this paragraph.

2. Adjacent Land Use. Grantee acknowledges and agrees for itself, its permitted assigns, transferees, and any other party claiming by, through or under it that: (i) Grantors have entered and may further enter into agreements with others for development and use of other lands owned by or formerly owned by Grantors located adjacent to or near the Property; (ii) such agricultural, developmental, commercial and other activities may involve by way of example and not in limitation thereof, noise, smoke, soot, dust, lights, noxious vapors, odors, and other nuisances of every description arising from or incidental to the activities conducted from time to time on adjacent or other nearby lands, subject only to zoning and other legal restrictions on use; and (iii) Grantee is acquiring the Property subject to all risks associated with the location of the Property. The foregoing shall not prevent Grantee from pursuing all remedies legally available to Grantee in the event of any violation of zoning or other legal restrictions on use.

3. Government Approvals. Grantee acknowledges that Grantors have made and make no representations regarding Grantee's ability to obtain or retain the zoning,

governmental approvals or permits necessary to use, occupancy or further development of the Property.

4. Definitions. As used herein: "Environmental Laws" means all federal, state and local laws, statutes, ordinances, codes, rules, regulations, standards, directives, interpretations and conditions of approval, and all legislative, administrative or judicial orders, decrees, requirements, rulings or judgments, which now or in the future may be applicable to the protection of human or animal health or safety, or to the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, the Resource Conservation and Recovery Act as amended by the Solid and Hazardous Waste Amendments of 1984, the Federal Insecticide, Fungicide and Rodenticide Act, as amended, the Hazardous Materials Transportation Act, the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act, the Safe Drinking Water Act, as the same may be amended from time to time, and any similar federal, Hawaii state (including without limitation Hawaii Revised Statutes Chapters 128D and 342B through 342P, inclusive) and local laws and ordinances, and regulations now or hereafter adopted, accomplished and promulgated pursuant thereto. "Hazardous Materials" as used herein, whether or not specifically defined or identified by applicable laws, shall mean and include, without limitation, oil or petroleum products or their derivatives, solvents, explosive substances, radioactive materials, asbestos, inflammable explosives, organic compounds (including polychlorinated biphenyl), pollutants, contaminants, hazardous wastes, toxic substances or related materials and any other toxic, ignitable, reactive, corrosive or related materials and any substances defined as or included in the definitions for "hazardous substances", "hazardous wastes", "extremely hazardous wastes", "hazardous materials", or "toxic substances" in the Environmental Laws.

5. Covenants Run with the Land. The restrictions, covenants, reservations, limitations, conditions and agreements of the Grantee set forth in this Deed shall run with the land described in Exhibit A attached hereto, shall be binding upon the Grantee and the Grantee's successors and assigns, including without limitation, any future owners, tenants, mortgagees, or other encumbrancers of all or any portion of the Property, and shall run in favor of and inure to the benefit of the Grantors, and the Grantors' successors, successors in trust and assigns.

6. Standing. Grantors own and may own lands adjacent to or nearby the Property. The value of such lands are or may be maintained and enhanced by the use of the Property in accordance with the terms of this instrument. From and after the recordation date, each owner of the Property, by taking title thereto, for itself and its successors and assigns, acknowledge and agree that Grantors, notwithstanding any lack of a legal property interest in the Property or any portion thereof, shall have "standing" in the legal sense to enforce the covenants, conditions, and restrictions of this instrument.

7. No Third Party Beneficiaries; Enforcement. This instrument is not intended, and shall not be deemed or construed, to confer any rights, power or privileges on any person or entity other than Grantors, their successors, successors in trust and assigns. The reservations, limitations, restrictions, covenants and conditions set forth herein can only be enforced by Grantors, their successors, successors in trust and assigns.

8. Attorneys' Fees. In the event of a dispute under this instrument, the prevailing party shall be entitled to recover from the losing party all costs including reasonable attorneys' fees.

9. Governing Law. This instrument shall be governed by laws of the State of Hawaii.

10. Perpetuities. If any of the reservations, limitations, restrictions, covenants or conditions set forth herein shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

11. Effect of Invalidity. The reservations, limitations, restrictions, covenants and conditions set forth herein shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof, of any such reservations, limitations, restrictions, covenants or conditions shall not affect the validity or enforceability of any other provisions hereof.

TOGETHER WITH the reversions, remainders, rents, issues and profits thereof, together with all buildings, improvements, tenements, rights, easements, privileges, and appurtenances to the same belonging or appertaining or held and enjoyed therewith, and all of the estate, right, title and interest of Grantors both at law and in equity therein and thereto.

TO HAVE AND TO HOLD the same unto Grantee, its successors and assigns, forever.

AND Grantors, for themselves and their successors in trust and assigns, do hereby covenant and agree with Grantee, its successors and assigns, that Grantors have done or suffered no act or thing whereby the Property hereby granted is encumbered, except as aforesaid and set forth hereinafter; that the Property is free and clear of liens and encumbrances made or suffered by Grantors except for the encumbrances contained herein and as set forth in Exhibit A, and real property taxes not yet due and payable; and that Grantors will and their successors in trust and assigns shall WARRANT AND DEFEND the same unto Grantee, its successors and assigns, forever, against the loss or claims and demands of all persons claiming by, through or under Grantors except as aforesaid.

The terms "Grantors" and "Grantee" wherever herein used shall be held to mean and include Grantors, their successors in trust and assigns, and Grantee, its successors and assigns, and this instrument shall be binding upon and shall inure to the benefit of the parties hereto and their said respective successors, successors in trust and assigns.

Any liability which may arise as a consequence of the execution of this instrument by or on behalf of the Trustees under the Will and of the Estate of James Campbell, Deceased, shall be a liability of the Estate of James Campbell and not the personal liability of any trustee or employee of the Estate of James Campbell.

[remainder of page left intentionally blank]

IN WITNESS WHEREOF, the parties have executed these presents on as of this
_____ day of _____, 2006.

Grantee:

THE TRUST FOR PUBLIC LAND, a
California nonprofit public benefit corporation

By _____
Name:
Its:

Approved as to Form
CARLSMITH BALL LLP
By _____

Grantors:

TRUSTEES UNDER THE WILL AND OF
THE ESTATE OF JAMES CAMPBELL,
DECEASED, acting in their fiduciary and not
in their individual capacities

Ronald J. Zlatoper

Richard W. Gushman II

C. R. Churchill

IN WITNESS WHEREOF, the parties have executed these presents on as of this
11 day of JULY, 2006.

Grantee:

THE TRUST FOR PUBLIC LAND, a
California nonprofit public benefit corporation

By Brian R. Kirchoff
Name: BRIAN R. KIRCHOFF
Its: REGIONAL COUNSEL

Grantors:

TRUSTEES UNDER THE WILL AND OF
THE ESTATE OF JAMES CAMPBELL,
DECEASED, acting in their fiduciary and not
in their individual capacities

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

)
)
) ss.
)

On this 5th day of July, 2006, before me personally appeared Ronald I. Zlatoner, Richard W. Cushman II., and C.R. Churchill, TRUSTEES UNDER THE WILL AND OF THE ESTATE OF JAMES CAMPBELL, DECEASED, to me known to be the persons described in and who severally executed the foregoing instrument, and severally acknowledged that they executed the same as their free act and deed as such Trustees. ll
n.p

Lydia L. Hannemann
Notary Public, State of Hawaii
Name: Lydia L. Hannemann
My commission expires: February 11, 2008

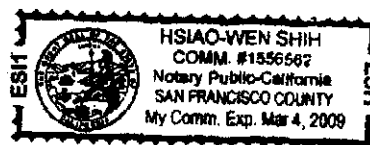
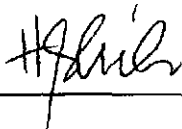
ACKNOWLEDGEMENT

State of California
County of San Francisco

On this 11th day of July, 2006, before me, **Hsiao-Wen Shih**, a notary public, personally appeared **Brian R. Kirchoff** personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature



**EXHIBIT A
TO TRUSTEES' LIMITED WARRANTY DEED**

PROPERTY DESCRIPTION

-PARCEL ONE:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Land Patent Grant Number S-15,666 to The Trustees under the Will and of the Estate of James Campbell, deceased) situate, lying and being at Puna, Island and County of Hawaii, State of Hawaii, being PARCEL A, same being portions of the Government Land of Makuu, Kaohe, Kaimu, Kehena, Kapaahu and Kamaili (C.S.F No. 20,315 dated December 13, 1985), and thus bounded and described as per survey of Raymond S. Nakamura, Land Surveyor, with the Survey Division, Department:

Beginning at the west corner of this parcel of land and on the south boundary of Land Court Application 1053, the coordinates of said point beginning referred to Government Survey Triangulation Station "OLAA" being 47,769.67 feet South and 8,228.41 feet West, thence running by azimuths measured clockwise from true South:

1.	240°	05'	12"	24,288.19	feet along Land Court Application 1053;
2.	345°	23'	30"	1,348.57	feet along the remainder of Government Lands;
3.	313°	00'		1,221.60	feet along the remainder of Government Lands;
4.	330°	16'		4,682.10	feet along the remainder of Government Lands;
5.	262°	03'		1,960.70	feet along the remainder of Government Lands;
6.	290°	02'		627.40	feet along the remainder of Government Lands;
7.	314°	28'		4,581.80	feet along the remainder of Government Lands;
8.	314°	47'		744.40	feet along the remainder of Government Lands;
9.	314°	12'		735.30	feet along the remainder of Government Lands;
10.	315°	31'		1,825.53	feet along the remainder of Government Lands;

11.	40°	41'	13.81	feet along the north side of 20-Foot Road;
12.	338°	15'	14.99	feet along the west side of 20-Foot Road;
13.	60°	05' 12"	25,840.22	feet along Parcel B of Government Lands;
14.	140°	23'	16,220.18	feet along Parcel B of Government Lands to the point of beginning and containing an area of 9,012 acres, more or less.

-PARCEL TWO:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Land Patent Grant Number S-15,666 to The Trustees under the Will and of the Estate of James Campbell, deceased) situate, lying and being at Puna, Island and County of Hawaii, State of Hawaii, being PARCEL B, same being portions of Government Land of Makuu, Kahohe, Kaimu, Kehena, Kapaahu and Kamaili (C.S.F. No. 20,316 dated December 13, 1985), and thus bounded and described as per survey of Raymond S. Nakamura, Land Surveyor, with the Survey Division, Department:

Beginning at the west corner of this parcel of land and at an angle on the south boundary of Land Court Application 1053, the coordinates of said point of beginning referred to Government Survey Triangulation Station "OLAA" being 55,748.70 feet South and 22,096.90 feet West, thence running by azimuths measured clockwise from true South:

1.	240°	05' 12"	16,000.00	feet along Land Court Application 1053;
2.	320°	23'	16,220.18	feet along Parcel A of Government Lands;
3.	240°	05' 12"	25,840.22	feet along Parcel A of Government Lands;
4.	338°	15'	3,262.76	feet along the west side of the 20-Foot Road;
5.	340°	23'	19.26	feet along the west side of the 20-Foot Road;
6.	342°	31'	250.51	feet along the west side of the 20-Foot Road;
7.	337°	27'	156.17	feet along the west side of the 20-Foot Road;

8.	347°	14'		271.04	feet along the west side of the 20-Foot Road;
9.	348°	38'		331.85	feet along the west side of the 20-Foot Road;
10.	353°	51'		125.10	feet along the west side of the 20-Foot Road;
11.	359°	30'		1,278.10	feet along the west side of the 20-Foot Road;
12.	358°	59'		2,128.77	feet along the west side of the 20-Foot Road;
13.	332°	38'		221.69	feet along the west side of the 20-Foot Road;
14.	315°	33'		287.92	feet along the west side of the 20-Foot Road;
15.	258°	17'		9.45	feet along the south side of the 20-Foot Road;
16.	352°	29'		6,915.35	feet along Parcel C of Government Lands;
17.	56°	27'		1,460.60	feet along Lots 3-B and 3-A of Upper Kaimu Homesteads;
18.	39°	38'		3,534.10	feet along Lot 3-A of Upper Kaimu Homesteads, Grant 6571 to K. Kamakani, Grant 6330 to S. Kamelamela and Grant 6328 to D. Kamelamela;
19.	53°	04'		10,520.90	feet along Government Lands;
20.	53°	31'	30"	9,863.30	feet along Grant 9275 to H. M. Holt, et al., Trustees under the Will and of the Estate of James Campbell, Deceased;
21.	148°	00'		4,100.00	feet along R.P. 8030, L.C.Aw. 8559-B, Ap. 14 to William C. Lunalilo;
22.	116°	00'		8,150.00	feet along R.P. 8030, L.C.Aw. 8559-B, Ap. 14 to William C. Lunalilo;

23. 126° 59' 25,105.30 feet along R.P. 8030, L.C.Aw. 8559-B, Ap. 14 to William C. Lunalilo to the point of beginning and containing an area of 16,843.891 acres, more or less.

-PARCEL THREE:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Number 8030, Land Commission Award Number 8559-B, Apana 14 to W. C. Lunalilo) situate, lying and being at Kahaualea, District of Puna, Island and County of Hawaii, State of Hawaii, bearing Tax Key designation (3) 1-1-001-016, and containing an area of 6.652 acres, more or less.

-PARCEL FOUR:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Number 8030, Land Commission Award Number 8559-B, Apana 14 to W. C. Lunalilo) situate, lying and being at Kahaualea, District of Puna, Island and county of Hawaii, State of Hawaii, bearing Tax Key designation (3) 1-1-001-017, and containing an area of 145.14 acres, more or less.

-PARCEL FIVE:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Number 8030, Land Commission Award Number 8559-B, Apana 14 to W. C. Lunalilo and all of Remnants R-1 and R-2 of the Kalapana-Volcano Road (abandoned)) situate, lying and being at Kahaualea, District of Puna, Island and County of Hawaii, State of Hawaii, being LOT A bearing Tax Key designation (3) 1-1-001-020, and containing an area of 738.491 acres, more or less.

SUBJECT, HOWEVER, to the following:

1. As to PARCELS ONE and TWO:

a. Terms, provisions covenants, conditions and reservations contained in Land Patent Grant Number S-15,666, including, but not limited to, matters relating to reservation of minerals, water and prehistoric and historic remains.

b. Final Judgment; Exhibits "A" and "B" dated August 26, 2002, filed in the Circuit Court of the Third Circuit, State of Hawaii, 89-089, on August 26, 2002, and recorded in the Bureau of Conveyances of the State of Hawaii on September 16, 2002 as Document No. 2002-163259, against the Estate of James Campbell, Deceased; W.H. McVay and P.R. Cassidy, in their fiduciary capacity as Trustees under the Will and the Estate of James Campbell, in favor of Pele Defense Fund.

c. Unrecorded License dated September 9, 1996, effective February 1, 1996, between C. R. Churchill, D. A. Heenan, Richard W. Gushman, II, and Ronald J. Zlatoper, Trustees under the Will and of the Estate of James Campbell, Deceased, as Lessor, and State of Hawaii, Department of Land and Natural Resources, as Lessee, as amended by unrecorded First Amendment of License dated as of

December 13, 2005, of which a Memorandum of License dated as of December 13, 2005, recorded in said Bureau as Document No. 2005-258550.

Partial Assignment of Licensor's Interest in License (Olson) dated as of December 19, 2005 ("Effective Date"), recorded in said Bureau as Document No. 2006-010986, by and between C. R. Churchill, D. A. Heenan, Richard W. Gushman, II and Ronald J. Zlatoper, Trustees under the Will and of the Estate of James Campbell, deceased (the "Licensor" or "Assignor"), the State of Hawaii, Department of Land and Natural Resources (the "Licensee"), and Edmund C. Olson, as Trustee of the Edmund C Olson Trust No. 2 under agreement dated August 21, 1985 ("Assignee").

2. As to PARCELS THREE, FOUR AND FIVE, reservation in favor of the State of Hawaii of all mineral and metallic mines.

3. As to PARCEL FOUR: Location of the seaward boundary in accordance with the laws of the State of Hawaii and shoreline setback line in accordance with County regulation and/or ordinance and the effect, if any, upon the area of the land described herein.

4. As to PARCEL FIVE:

a. Grant dated December 14, 1959, recorded in said Bureau in Liber 4050, Page 451, in favor of Albert F. Lee, husband of Choy Kyau Zane Lee, granting a right-of-way in the nature of an easement 40 feet wide for roadway purposes only in common with the Grantors and others entitled over and across a portion of said parcel, said easement being more particularly described as follows:

Being a portion of R. P. 8030, L. C. Aw. 8559-B, Apana 14 to William C. Lunailo, situate at Kahaualea, District of Puna, County and State of Hawaii;

Beginning at the southeast corner of this strip of land, at the southeast corner of Grant 2216 to Kaiakahi and on the north side of the Volcano-Kalapana Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PULAMA" being 5111.71 feet south and 9943.29 feet east, and running by azimuths measured clockwise from true South:

- | | | |
|----|--------------|--|
| 1. | 75° 00' | 41.21 feet along the north side of the Volcano-Kalapana Road; |
| 2. | 151° 04' 15" | 1,787.15 feet; |
| 3. | 151° 15' 40" | 1,634.06 feet; |
| 4. | 154° 41' | 71.19 feet; |
| 5. | 244° 41' | 40.00 feet to the westerly boundary of Grant 3208 to Kaloi; |
| 6. | 334° 41' | 70.00 feet along the westerly boundary of Grant 3208 to Kaloi to the south corner of said Grant; |

7. 331° 15' 40" 1,632.80 feet along the westerly boundary of Grant 2093 to Kaikuahine to a spike in old "H" cut in pahoehoe;
8. 331° 04' 15" 1,797.00 feet along the westerly boundary of Grant 2216 to Kaiakahi to the point of beginning and containing an area of 3.21 acres, more or less.

Termination of grant of roadway easement by the Trustees under the Will and of the Estate of James Campbell, deceased, dated April 6, 1962, recorded in said Bureau in Liber 4252, Page 377. (Note: The foregoing termination is a unilateral termination signed by the Grantors only.)

b. Grant dated September 17, 1959, recorded in said Bureau in Liber 4050, Page 455, in favor of Abraham Waipa, husband of Elizabeth K. Waipa, and Hana Waipa, unmarried, granting a right-of-way in the nature of an easement 40 feet wide for roadway purposes only in common with Grantors and others entitled over and across a portion of said parcel, said easement being more particularly described under paragraph 4.a. above.

c. Grant dated September 16, 1959, recorded in said Bureau in Liber 4050, Page 460, in favor of Martha Lum Ho, granting a right-of-way in the nature of an easement 40 feet wide for roadway purposes only in common with the Grantors and others entitled over and across a portion of said parcel, said easement being more particularly described under paragraph 4.a. above.

d. Grant dated September 17, 1959, recorded in said Bureau in Liber 4050, Page 464, in favor of George K. Waipa, unmarried, granting a right-of-way in the nature of an easement 40 feet wide for roadway purposes only in common with the Grantors and others entitled over and across a portion of said parcel, said easement being more particularly described under paragraph 4.a. above.

e. Grant dated September 14, 1959, recorded in said Bureau in Liber 4050, Page 468, in favor of Edward A. Kelley and Maria W. Kelley, as tenants by the entirety, granting a right-of-way in the nature of an easement 40 feet wide for roadway purposes over and across a portion of said parcel, said easement being more particularly described under paragraph 4.a. above.

f. Grant dated September 15, 1959, recorded in said Bureau in Liber 4068, Page 130, in favor of John W. Waipa, husband of Elsie Kum Suni Waipa, granting a right-of-way in the nature of an easement 40 feet wide for roadway purposes only in common with the Grantors and others entitled over and across a portion of said parcel, said easement being more particularly described under paragraph 4.a. above.

g. "Reserving to the State of Hawaii, its successors and assigns, in perpetuity, all minerals and surface and ground waters appurtenant to the land described, together with the right to enter, sever, and remove minerals or to develop, capture, divert or impound water; provided that the State shall pay just compensation to the surface owner for improvements taken as a condition precedent to the exercise of such reserved rights."; as reserved in Deed dated July 7, 1965, recorded in said Bureau in Liber 5108 at Page 435.

5. As to PARCELS THREE, FOUR AND FIVE, grant dated June 25, 1982, recorded in said Bureau in Liber 16438, Page 558, in favor of Hawaiian Telephone Company, now known as Hawaii Telecom, Inc., granting a perpetual right and easement to build, construct, rebuild, reconstruct, repair, maintain and operate poles and wire lines, etc., for the transmission and distribution of electricity, etc.

Tax Map Keys: Hawaii 1-2-10-2 (PARCEL ONE)
Hawaii 1-2-10-3 (PARCEL TWO)
Hawaii 1-1-1-16 (PARCEL THREE)
Hawaii 1-1-1-17 (PARCEL FOUR)
Hawaii 1-1-1-20 (PARCEL FIVE)

**MINUTES FOR THE
MEETING OF THE
BOARD OF LAND AND NATURAL RESOURCES**

DATE: FRIDAY, SEPTEMBER 9, 2005
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

Chairperson Peter Young called the meeting of the Board of Land and Natural Resources to order at 9:14a.m. The following were in attendance:

MEMBERS

Mr. Peter Young
Mr. Ted Yamamura
Mr. Gerald DeMello
Ms. Taryn Schuman

Mr. Tim Johns
Mr. Ron Agor
Mr. Toby Martyn

STAFF

Mr. David Gaud, DOCARE
Mr. Sam Lemmo, OCCL
Ms. Christine Ogura, DOFAW
Mr. Mike Shinozuka, DOT
Ms. Holly McEldowney, Parks

Mr. Russell Tsuji, Land
Mr. Paul Conry, DOFAW
Mr. Dwayne Meadows, DAR
Ms. Lauren Tanaka, Parks

OTHERS

Ms. Pam Matsukawa, Deputy Attorney General
Mr. Max Graham, K-1
Mr. Bill Byrns, D-12
Mr. Jim Romy, E-1
Mr. Ed Holland, E-1
Mr. Campbell Cavasso, E-1
Mr. Sam Blair, E-1
Mr. Rick Ralston, E-1

Dr. Jonathan Schuer, C-3
Mr. Frank Hay, E-1
Mr. David Bettencourt, E-1
Mr. Edward Wels, E-1
Mr. Don Carswell, E-1
Mr. Paul Matsunaga, E-1

{Note: language for deletion is [bracketed], new/added is underlined}

to hold public hearings to designate the Wao Kele O Puna tract as a forest reserve and remove the Geothermal Resource Sub Zone designation on the site.

Dr. Jonathan Scheuer of the Office of Hawaiian Affairs read a letter from its administrator, Clyde Namuo, in support of staff's recommendation.

The Trust for Public Lands noted their support of staff's recommendation.

Written testimony was received from the Sierra Club.

Unanimously approved as submitted (DeMello/Johns).

Item K-1: Request to Amend Title 13, Chapter 5, Hawaii Administrative Rules (Chap 13-5 HAR) Related to Single Family Residential Standards at Haena, Kauai.

Sam Lemmo, Administrator of the Office of Conservation and Coastal Lands (OCCL) let it be known the petitioner is requesting a change to amend Section 13-5-41 of the Hawaii Administrative Rules. As the rules now stand the minimum lot size for a single-family residence is 10,000 square feet. The petitioner submitted an application for a single-family residence for their lot in Haena but their application was rejected, as the size of the lot was 7,931 square feet. As background information, Mr. Lemmo reminded the Board of the policy they adopted in which they allowed one house per lot within the Haena Hui partition approved by the courts in 1967. In 1994, Title 13-5, HAR were adopted. The rules included a new provision requiring minimum lot size of 10,000 square feet for single-family residence. This rule precluded the construction of single-family residences on lots less than 10,000 square feet on lots within the Haena Hui partition. A request by staff to hold public hearings on this matter was granted and held on Kauai. Mr. Lemmo recommended the Board approve the petitioners' request to amend Section 13-5-41 of the Hawaii Administrative Rules inclusive of all amendments as proposed in Exhibit A of staff's submittal and authorize the forwarding of the rule amendment to the Governor for approval and enactment.

Max Graham, attorney for the petitioner's was present.

Unanimously approved as submitted (Agor/Johns).

Item K-2: Amendment to Conservation District Use Application (CDUA) KA-3240 for Kikiaola Small Boat Harbor Project (Navigation Improvement, Beach Nourishment).

Mr. Lemmo pointed out the US Army Corps of Engineers indicated they have a problem with the August 26, 2005 Board approval of CDUP KA-3240 for improvements to the Kikiaola Small Boat Harbor. Their problem is with Condition No. 1 and No. 8 which calls for the permittee to indemnify and hold the State of Hawaii harmless and that no motorized construction equipment be operated in the water. Mr. Lemmo recommended the Board approve this request to delete Condition No. 1 and Condition No. 8 of the CDUP KA-3240 for improvements to the Kikiaola Small Boat Harbor, Phase I and Phase II.

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawaii 96813

September 9, 2005

Chairperson and Members
Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Land Board Members:

SUBJECT: Memorandum of Agreement to Assist the Office of Hawaiian Affairs in the Acquisition and Management of 25,856 Acres of Land from the Estate of James Campbell at Wao Kele O Puna for the Preservation of Natural and Cultural Resources; Disposition of the Geothermal Mining Lease R-5 and Well Monitoring License Agreement for the Property; and Approval to Conduct Public Hearings to Designate the Area as a Forest Reserve and Remove the Geothermal Resource Subzone Designation on the Site

Background:

The Estate of James Campbell owns three parcels of land (27,786 acres) in the Puna district that collectively make up what is known as Wao Kele O Puna (WKOP). This forested area is situated along the east rift zone of Kilauea Volcano within the Puna district. The specific parcels are Tax Map Keys: 1-2-10-2 and 1-2-10-3 constituting 25,856 acres in conservation districts, and TMK: 1-2-10-1 which is 1,930 acres in agriculture district. The property is comprised of a combination of dense native 'Ohi'a forests, and a variety of rare native tree and plant species. The area also consists of lava flows where kipuka serve as seed banks for future generations of forests in the area as well as for the Volcano National Park. This unique forest is the last large intact lowland rainforest ecosystem in the State and was once the home to countless culturally significant uses.

The Estate of James Campbell is under mandate to dissolve by January 20, 2007 and has placed a high priority on selling these parcels, which is currently on the market. The Trust for Public Lands (TPL), as well as many communities and local groups have long been interested in preserving WKOP and began negotiations for the purchase of two of the three parcels two years ago. In June 2004 TPL requested that DLNR apply for funding from the USDA Forest Service's Forest Legacy Program to acquire the two conservation district parcels.

Land found to be eligible for Forest Legacy funding must follow specific criteria that are detailed in the State Assessment of Needs (AON). In November 2004 the State amended the 1994 AON by changing the criteria used to designate Forest Legacy Areas. This amendment resulted in

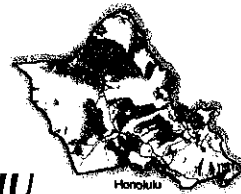
ITEM C-3

4. Management Responsibilities/Transfer of Knowledge. It is DLNR's goal to relinquish to OHA all management duties and responsibilities related to the WKOP property as soon as possible and within a 10-year period. Transfer of Management Responsibility shall follow the agreed management plan guidelines. The plan shall define how, over time, the Parties will share responsibility for management of the WKOP Property. At such time as OHA is capable, full management responsibilities of the plan shall be relinquished from DLNR to OHA.
5. Forest Reserve Designation. The Parties agree to work expeditiously and in good faith to have the WKOP Property designated as a Forest Reserve pursuant to HRS Chapter 183 and to thereafter be jointly managed as a Forest Reserve by OHA and DLNR. This will establish DLNR's management and enforcement authority for the property.
6. Management Plan. Upon execution of this Agreement, the parties agree to cooperate to develop a Comprehensive Management Plan (Plan) for the WKOP Property.
7. Mineral Rights Lease Agreements. The rights and obligations that exist under the current lease will continue until otherwise terminated. OHA and the Department are in agreement to terminate Geothermal Mining Lease R-5 issued to the Estate of James Campbell allowing geothermal resource extraction.
8. License Agreement. The State's obligations and rights of the well monitoring license agreement will continue until otherwise terminated. OHA and DLNR are in agreement to bifurcate the existing well monitoring license agreement with the Estate of James Campbell and to ensure that the Trust for Public Lands and OHA retain their rights under the agreement that the State will close the well.
9. Well Plugging and Abandonment. The agreement provides that DLNR and OHA shall work together to secure funding for plugging and abandonment of the KA1-1 and encourage the County of Hawaii to partner and share the cost at 50%, 20% and 30% respectively.
10. Management Funding: Subject to OHA Board of Trustees approval, OHA will contribute up to TWO HUNDRED TWENTY EIGHT THOUSAND AND NO/100 DOLLARS annually for the development of a management plan, establishing management capacity, and active management practices. Subject to approval of the DLNR Board of Land and Natural Resources, DLNR will contribute up to ONE HUNDRED THOUSAND AND NO/100 DOLLARS annually, either in appropriated funds (obtained from various sources) or in-kind services.
11. Geothermal Subzone Designation Removal. DLNR and OHA shall work together to remove the Geothermal Resource Subzone designation specified under HRS §§ 205-5.1 and 205-5.2, from the WKOP Property.

The Lands Eligible for the Forest Legacy Program in the State of Hawaii



KAUAI



OAHU

Honolulu



MOLOKAI

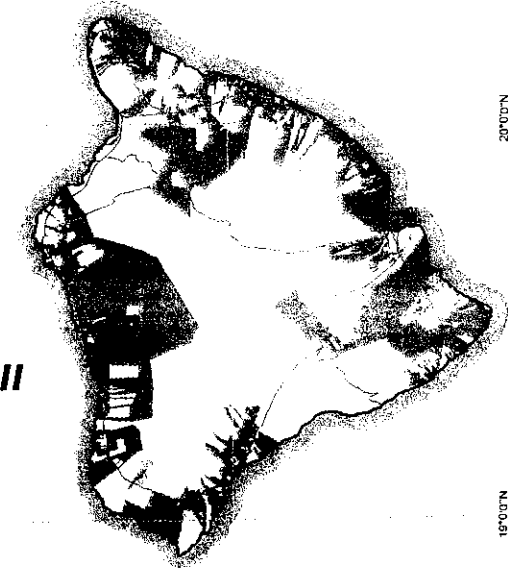
Kaunaloa



LANAI





MAUI



HAWAII

Legend

-  Eligible Private Lands
-  Major Roads



State of Hawaii
Department of Land and Natural Resources
Division of Forestry and Wildlife
Map No. FW - 0631 (01/2005)



ATTACHMENT I

22°0'0"N

21°0'0"N

20°0'0"N

19°0'0"N

160°0'0"W

159°0'0"W

158°0'0"W

157°0'0"W

156°0'0"W

22°0'0"N

21°0'0"N

20°0'0"N

19°0'0"N

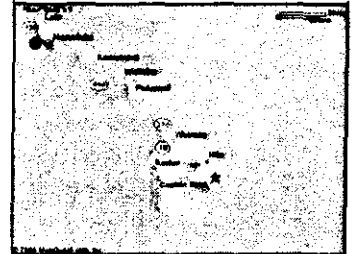
Forest Legacy Project



Wao Kele o Puna, Puna District (Hawaii County County), Hawaii

FUNDING HISTORY

<i>Forest Legacy Program FY 2006 Funding</i>	<i>\$ 3,390,000</i>
<i>FY 2006 Non-Federal Cost Share</i>	<i>\$ 1,130,000</i>
<i>FY 2006 Project Costs</i>	<i>\$ 4,520,000</i>
<i>FY 2006 Project Acres</i>	<i>25,856</i>



<i>Forest Legacy Funding to Date</i>	<i>\$ 0</i>
<i>Total Project Costs</i>	<i>\$ 4,520,000</i>
<i>Total Project Acres</i>	<i>25,856</i>

FUNDING DETAILS

<i>Tract Name</i>	<i>Size (acres)</i>	<i>Tract Cost</i>	<i>FLP Funding</i>	<i>Non-Fed Cost Share</i>	<i>Status</i>
Wao Kele o Puna	25,856	\$ 4,520,000	\$ 3,390,000	\$ 1,130,000	Proposed 2006
Total	25,856	\$ 4,520,000	\$ 3,390,000	\$ 1,130,000	

General Description – The Wao Kele O Puna tract is composed of dense native Hawaiian forest covering over forty square miles of the Puna District on the Island of Hawai'i. This 25,856 acre property represents one of the last large intact lowland native forests in the State of Hawai'i. This specific forest parcel serves as a critical seed bank for native forest regeneration of the barren lava flows recently covering large swaths of Hawai'i Volcanoes National Park (HVNPN) next door. Wao Kele has been the focus of controversy for over 20 years. Numerous Native Hawaiian and environmental groups opposed geothermal mining and the blocking of community access to the land. TPL has negotiated an option agreement with the private landowner, offering a rare opportunity for a fee simple conservation purchase, permanent protection of the native forest, and allowing appropriate public access once again. Forest Legacy funding will be matched by a significant donation of land value—potentially several million dollars—according to a 2003 appraisal. Because of the land value donation facilitated by TPL, the actual price of Wao Kele's rainforest at \$131 per acre—even as a fee simple acquisition—is actually lower than many conservation easement proposals.

PROJECT FEATURES

Important:

- "It is rare to find an archaeological record providing such clear insight into past cultural uses as Wao Kele o Puna. The cave systems and the sites

- Large-scale subdivision and development of native forests in Puna has fragmented forests surrounding WKOP. On 3 sides of tract, land has been subdivided for residential use, cleared for agricultural use, and experienced wood chipping operations.
- Lowland wet forests were once a common part of the Hawaiian landscape, but today are an extremely endangered ecosystem. Original native vegetation is rare in lowland areas, due to land conversion via agriculture and other development.
- Subdivision and residential building of the surrounding area has not only resulted in simple clearing of native species, it has greatly accelerated the encroachment and spread of many of the approximately 200 non-native species in the area.
- Wao Kele o Puna is located less than 20 miles from Hilo, the second-largest city in the state.

Strategic:

- The WKOP area was listed in the state-wide USFWS Hawaii Native Forest Birds Recovery Plan by as one of the few recent sightings of the 'O'u, a forest bird that is feared extinct although many believe still exists within the WKOP parcel.
- The WKOP parcel was specifically and independently identified in 2004 by the State as a strategic tract desired to open to public hunting. The private land is currently off limits to hunters.
- USFS recently re-located HI office to within 20 miles of WKOP, although USFS owns no land in HI. WKOP can serve as ideal "working lab" for testing methods of invasive species prevention—a key program for Pacific Island Forestry.
- With acquisition of WKOP, an important link will be filled providing an almost unbroken chain of protected forest areas from "summit to sea." This corridor is especially crucial to protect for native bird populations showing recent signs of recovery from avian malaria.
- WKOP is a key link in long term protection for forests in this region. Its geographic position provides a critical buffer from invasive species invasion into two large adjacent protected areas: the 333,000 acre HVNP, and 16,000 State Natural Area Reserve.
- WKOP is strategically located near Ola'a-Kīlauea, a 32k acre public-private partnership that manages watershed health to control invasive species, ensure the survival of endangered plants and animals. It is currently considering expansion in WKOP region.
- WKOP serves as essential seed bank of native species for natural re-generation of the hundreds of native tree and plant species on new lava flow areas in HVNP and State Reserve. Native 'ohia species is only seedling strong enough to break up solid lava to begin process.

Ready:

- A complete appraisal meeting federal standards was completed in September 2003. An update can be commissioned with 30 days notice. Appraisal figure shows potential for a land value donation of several million dollars above the 25% match.
- Cost Share Agreement: Forest Legacy funding will be matched by at minimum a 25% donation in land value to the project. TPL has clear strategy (negotiated option, previous appraisal) to secure the land value donation.
- Landowner is highly motivated to dispose of property within two year window. State has requested state option this year to facilitate fee simple purchase of WKOP. TPL has committed significant staff time and hard costs to bring property to readiness.
- Landowner must dispose of property in its entirety by January 2007, therefore it is essential that this project be funded in its entirety in FY 2006 rather than in phases.
- TPL has an exclusive option agreement with landowner allowing purchase at considerable discount. However, option depends on a successful Forest Legacy application to remain in effect through April 30 2006 when purchase is expected.
- Supporting parties include: County of Hawai'i (2004 Council Resolution supports purchase/conservation), Hawai'i Volcanoes National Park (#1 visited National Park in State of Hawai'i), Malama O Puna (Local non-profit community group), Native American Rights Fund (National Native American advocacy group), Native Hawaiian Legal Corporation (Statewide Native Hawaiian Advocacy Group), Pele Defense Fund (Local non-profit community group created to protect WKOP), Rainforest Action Network (International Environmental Advocacy Group) and Trust for Public Land (Nation-wide non-profit land conservation organization)

For more information on the Forest Legacy Program, contact:

Richard Cooksey
*National Forest Legacy
Program Coordinator*
USDA Forest Service
Washington Office
Sidney R. Yates Federal
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201 14th Street, SW
Washington, DC 20250
202-205-1469
202-205-1271 fax
rcooksev@fs.fed.us

John Henshaw
*Forest Legacy Program
Coordinator*
USDA Forest Service
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Sheri Sue Mann
*Cooperative Resource
Management Forester*
Hawaii Division of Forestry
and Wildlife
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Room 325
Honolulu, HI 96813
808-587-4172
808-587-0160 fax
Sheri.S.Mann@hawaii.edu



**MEMORANDUM OF AGREEMENT BETWEEN THE DEPARTMENT OF LAND AND
NATURAL RESOURCES, STATE OF HAWAII AND THE OFFICE OF HAWAIIAN
AFFAIRS**

This Memorandum of Agreement (Agreement) is entered into by and between the Department of Land and Natural Resources of the State of Hawai'i (DLNR) and the Office of Hawaiian Affairs (OHA), hereinafter collectively referred to as the Parties and is designed to promote increased understanding, cooperation, interaction and further negotiations on issues of mutual concern.

OHA wishes to enter into an agreement of sale with The Trust for Public Lands (TPL), a California nonprofit public benefit corporation to purchase that certain real property known as Wao Kele 'O Puna, (Tax Map Keys: 1-2-10-2 and 1-2-10-3, respectively), consisting of approximately 25,855.891 acres, situate in Puna, Island and County of Hawai'i, State of Hawai'i (WKOP Property), more particularly described in Exhibit A attached hereto and incorporated herein by reference, and develop capacity to manage land.

The Parties wish to perpetuate the natural and cultural resources, while maintaining traditional and customary practices on the WKOP Property through appropriate resource management as provided under existing State of Hawai'i law for Forest Reserves and that described in the United States Department of Agriculture (USDA) Forest Service Forest Legacy Program Guidelines (Exhibit B). The parties wish to work together to provide management of WKOP Property, initially DLNR, with management responsibility to be turned over to OHA as OHA acquires capacity, experience and expertise in land management. This Agreement is based on discussions between the Parties and provides basic principles and guidelines for future negotiations.

The DLNR designates Peter T. Young as its negotiator and authorized signatory of this Agreement. The OHA designates Administrator Clyde W. Nāmu'o as its negotiator and authorized signatory of this Agreement.

In terms of a broad overview, and subject to more specific discussions in the future, the general terms of the Agreement with respect to the WKOP Property follow:

I. TERMS

A. Subject to the conditions identified in part II below, the Parties agree as follows:

1. Funding. The WKOP Property will be purchased primarily with funding from the USDA Forest Service Forest Legacy Program and OHA. The exact funding levels are not known at this time but are expected to be approximately \$3.4 million from the Forest Legacy Program and \$250,000 from OHA.

2. Compliance with Federal Grant Requirements. Management and use of the WKOP Property shall be executed in compliance with all applicable Federal Grant requirements and those found in the Forest Service Forest Legacy Program Guidelines.

3. Management Responsibility. Subject to the terms and conditions that follow and to terms or conditions that the Parties may agree to in the future, the OHA and DLNR shall bear the responsibilities for the management and maintenance of the WKOP Property, including but not necessarily limited to, any geothermal well sites, until OHA is capable of taking over all responsibilities for management. The DLNR and OHA shall provide management services in a manner consistent with any Federal Grant requirements and current State requirements for Forest Reserves. Consideration will be given to the conditions imposed pursuant to the Findings of Fact and Conclusions of Law and Final Declaratory Judgment/Injunction issued on August 26, 2002

a. Enforcement. It is intended that initially the enforcement of Forest Reserve rules shall be administered by the DLNR, however, as knowledge transfer occurs these duties will move to OHA.

b. Revocation. Upon request by OHA, DLNR shall cooperate with OHA to seek a revocation, or suspension of any and all proclamations and orders or any parts thereof which set apart the WKOP Property as Forest Reserve pursuant to Chapter 183. Revocation of lands in Forest Reserve status must follow the statutory process of the Board of Land and Natural Resources and approval by the Governor.

7. Management Plan. Upon execution of this Agreement, the parties agree to cooperate and to develop a Comprehensive Management Plan (Plan) for the WKOP Property to include but not limited to the following conditions:

a. The cost of developing the Plan shall be funded by agreement between the OHA and DLNR and should be completed within three (3) years after execution of this Agreement.

b. Implementation of the PLAN is contingent on funding. The PLAN shall include an inventory and assessment of natural / cultural resources, historic sites, risks, threats to resources, interpretive values, and economic development potential. The section on economic development potential shall only address those uses compatible with the protection of traditional and customary uses of the site, sustainable use and protection of the resources of the site, and the terms of the Forest Legacy Program funding.

c. Prior to implementation of the Plan, DLNR shall manage the WKOP Property as other Forest Reserves would be managed and in compliance with the terms and conditions of the Forest Legacy Program funding.

(4) Preservation of Plant and Wildlife Habitat: The DLNR may protect or enhance native plant and wildlife habitat or the natural, scenic or open-space nature of the WKOP Property.

(5) Traditional Hunting and Traditional Gathering: Wildlife hunting not prohibited by applicable laws or regulations may occur, if it is conducted in a manner that does not significantly deplete native wildlife resources or damage the ecology of the Property. Traditional hunting and gathering practices shall be governed in accordance with the PDF case.

(6) Water: Exploration or extraction of water resources and any activity associated therewith will be permitted.

f. Prohibited Uses. The following “non-forest uses” as defined by the Forest Legacy Program are uses of the land inconsistent with maintaining forest cover including, but not limited to, activities that result in significant surface disturbance such as residential subdivision, commercial development, and mining. The following uses and practices are prohibited on the WKOP Property.

(1) Mineral Extraction: Any exploration or extraction of oil, gas, minerals, steam, hydrocarbons, soil, sands, gravel or other material on or beneath the WKOP Property for the purpose of exporting these materials/resources off the WKOP Property.

(2) Grading and Excavation: Any alteration of land forms by grading or excavation of topsoil, earth, or rock, unless necessary or appropriate for cultural restoration or wildlife management, or emergency purposes (such as fire fighting) and in keeping with good natural resource management practices.

(3) Subdividing Land: The division, subdivision, partition, or de facto subdivision of the WKOP Property. However, this paragraph does not prohibit the lease of a

Subzone). Until otherwise agreed upon, all rights and obligations that exist pursuant to that State R-5 Lease covering the 9,014 Acres of Kilauea Middle East Rift, District of Puna, Island of Hawaii, State of Hawaii, shall continue.

9. License Agreement. On September 9, 1996, the Campbell Estate entered into a well monitoring license agreement with the DLNR to monitor a geothermal production well (KA1-1) and a slimhole geothermal well (SOH-4) within the Geothermal Subzone (License Agreement). Unless otherwise agreed upon by the Parties, obligations and rights pursuant to the License Agreement shall remain unaffected by this Agreement.

10. State R-5 Lease and License Agreement Assignment to DLNR. The DLNR will work with TPL to transfer and assign back to OHA Campbell Estate's rights and obligations pursuant to existing State R-5 Lease and the State Well Monitoring License Agreement. DLNR will continue to be wholly responsible for the management, maintenance and remediation of the geothermal wells on the WKOP Property as provided under the State Well Monitoring License Agreement.

11. Plugging and Abandonment. Unless otherwise agreed to, and consistent with the existing Lease and Licensing agreements, the DLNR, the OHA shall work together to secure funding for plugging and abandonment of the existing geothermal well shafts. The DLNR and OHA shall make reasonable and diligent efforts to plug and abandon existing geothermal well sites within three years after acquisition of the WKOP Property by OHA. To facilitate the plugging of the wells in an expedient manner the Parties agree to the following:

a. The Parties shall work cooperatively to secure full funding from the State Legislature for the DLNR to plug and abandon the well(s) during the 2006 legislative session.

coordination of all WKOP activities. These duties include, but are limited to development of the management plan, seek funds from the Hawai'i Legislation and/or from external sources, seek support from the County of Hawai'i, implementation of management activities, facilitate the transfer of knowledge from DLNR to OHA pertaining to land ownership and management, enforcement of applicable regulations, undertake the necessary duties to change the WKOP Property designation to a Forest Reserve, and supervise public hearings and meetings.

14. Geothermal Subzone Designation Removal. DLNR and OHA shall work together to remove the Geothermal Resource Subzone designation specified under HRS §§ 205-5.1 and 205-5.2, from the WKOP Property.

B. If any of the terms identified above are deemed unachievable, unfeasible, impractical, or not viable for any reason, the Parties agree in good faith to cooperate and work together to find alternate feasible and acceptable terms that will facilitate the intended goals.

C. The Parties agree in good faith to cooperate with each other to accomplish the intended goals identified above. Cooperation includes, but is not limited to, providing copies or access to documents referenced in this Agreement, providing copies of or access to other relevant documents and providing information that may facilitate the intended transfer.

II. CONDITIONS

A. OHA Board of Trustees Approval. This Agreement and any subsequent agreement between the Parties that concerns the WKOP Property may be subject to approval by the OHA Board of Trustees.

To OHA:

OFFICE OF HAWAIIAN AFFAIRS
711 Kapi'olani Blvd. Suite 500
Honolulu, HI 96813
Attn: Clyde Namu'o

To DLNR:

DEPARTMENT OF LAND AND NATURAL
RESOURCES
1151 Punchbowl St.
Honolulu, HI 96813
Attn: Peter T. Young

All notices shall be deemed effective upon receipt. Any party may from time to time change its address for purposes of this section by notice in writing to the other party.

G. Binding Effect. Upon execution of this Agreement by both Parties, the Parties shall cooperate and negotiate in good faith conditions and terms to complete and execute the definitive documents and instruments necessary to accomplish the intended goals. Terms and conditions of any future agreement shall be consistent with this Agreement and upon such other terms as the Parties shall agree.

The foregoing accurately reflects the Agreement between the Parties. We indicate our acceptance of this document and the agreement herein by executing this Agreement.

OFFICE OF HAWAIIAN AFFAIRS

Date _____

By _____
CLYDE W. NĀMU'O
It's Administrator



STATE OF HAWAII

SURVEY DIVISION

DEPT. OF ACCOUNTING AND GENERAL SERVICES

HONOLULU

C.S.F. No. 20,315

December 13, 1985

PORTIONS OF GOVERNMENT LANDS OF
MAKUU, KAOHE, KAIMU, KHEHA, KAPAAHU AND KAMAILI

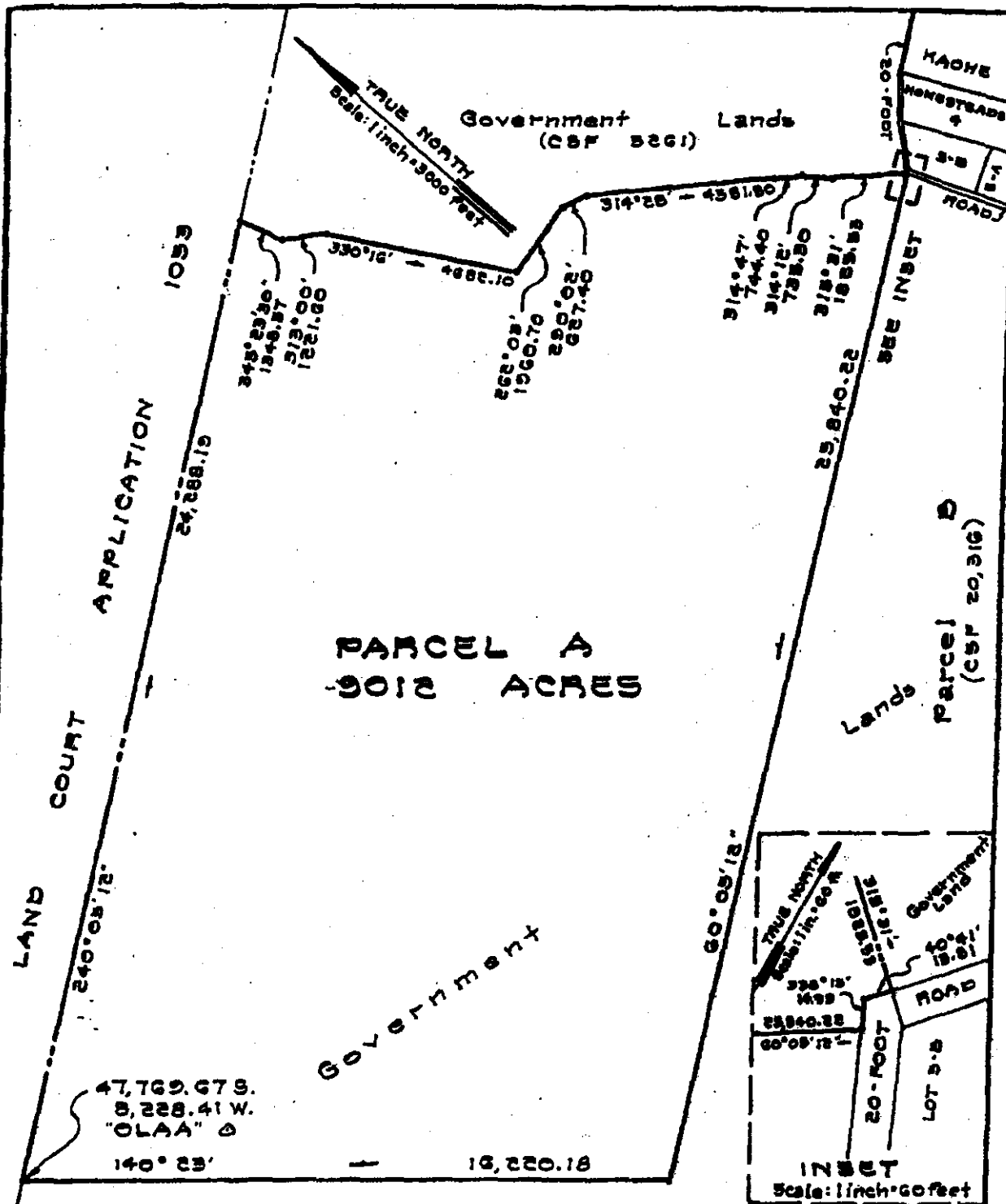
PARCEL A

Puna, Island of Hawaii, Hawaii

Beginning at the west corner of this parcel of land and on the south boundary of Land Court Application 1053, the coordinates of said point of beginning referred to Government Survey Triangulation Station "OLAA" being 47,769.67 feet South and 8228.41 feet West, thence running by azimuths measured clockwise from True South:-

1. 240° 05' 12" 24,288.19 feet along Land Court Application 1053;
2. 145° 23' 30" 1348.57 feet along the remainder of Government Lands;
3. 313° 00' 1221.60 feet along the remainder of Government Lands;
4. 330° 16' 4682.10 feet along the remainder of Government Lands;
5. 262° 03' 1960.70 feet along the remainder of Government Lands;
6. 290° 02' 627.40 feet along the remainder of Government Lands;
7. 314° 28' 4581.80 feet along the remainder of Government Lands;
8. 314° 47' 744.40 feet along the remainder of Government Lands;
9. 314° 12' 735.30 feet along the remainder of Government Lands;
10. 315° 31' 1825.53 feet along the remainder of Government Lands;
11. 40° 41' 13.81 feet along the north side of 20-Foot Road;

E X H I B I T A



**PORTIONS OF GOVERNMENT LANDS OF
MAKUU, KAOHE, KAIMU, KAHENA, KAPAHAU AND KAMAILI
PARCEL A**

Puna, Island of Hawaii, Hawaii
Scale: 1 inch = 3000 feet

JOB H-444 (83)
C.B.K. G. J.M.M.

TAX MAP 1-2-1012

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

EXHIBIT "A"

C.S.F. No. 20,315

U.S.N. Dec. 13, 1985

December 13, 1985

- | | |
|-----------------|--|
| 12. 358° 59' | 2128.77 feet along the west side of the 20-Foot Road; |
| 13. 332° 38' | 221.69 feet along the west side of the 20-Foot Road; |
| 14. 315° 33' | 287.92 feet along the west side of the 20-Foot Road; |
| 15. 258° 17' | 9.45 feet along the south side of the 20-Foot Road; |
| 16. 352° 29' | 6915.35 feet along Parcel C of Government Lands; |
| 17. 56° 27' | 1460.60 feet along Lots 3-B and 3-A of Upper Kaimu Homesteads; |
| 18. 39° 38' | 3534.10 feet along Lot 3-A of Upper Kaimu Homesteads, Grant 6371 to K. Kamakani, Grant 6330 to S. Kamalamela and Grant 6328 to D. Kamalamela; |
| 19. 53° 04' | 10,520.90 feet along Government Lands; |
| 20. 53° 31' 30" | 9863.30 feet along Grant 9275 to H. M. Holt, et al., Trustees under the Will and of the Estate of James Campbell, Deceased; |
| 21. 148° 00' | 4100.00 feet along R.P. 8030, L.C.Aw. 8559-B, Ap. 14 to William C. Lumalilo; |
| 22. 116° 00' | 8150.00 feet along R.P. 8030, L.C.Aw. 8559-B, Ap. 14 to William C. Lumalilo; |
| 23. 126° 59' | 25,105.30 feet along R.P. 8030, L.C.Aw. 8559-B, Ap. 14 to William C. Lumalilo, to the point of beginning and containing an AREA OF 16,843.891 ACRES. |

Excepting and reserving therefrom all existing trails within the above-described Parcel B.

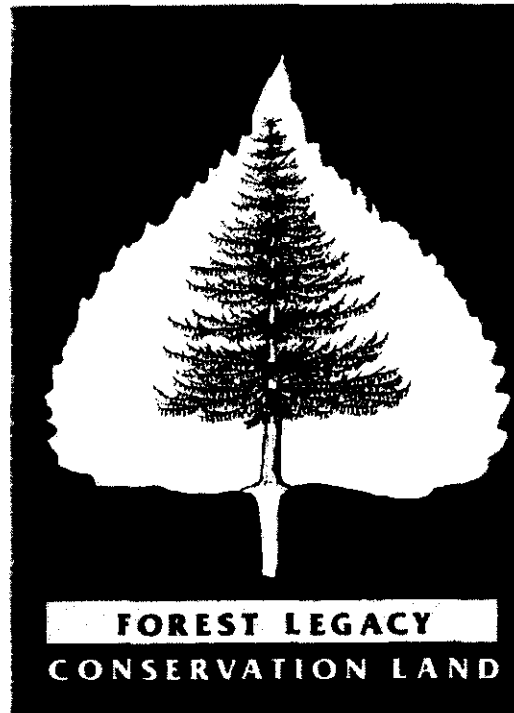
SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: Raymond S. Nakamura
Raymond S. Nakamura
Land Surveyor

pt

FINAL

Forest Legacy Program Implementation Guidelines



June 30, 2003



USDA Forest Service
State & Private Forestry
Cooperative Forestry

E X H I B I T B

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PART 1 - GENERAL PROGRAM GUIDELINES

I. Authority and Purpose of the Forest Legacy Program (FLP)

A. Authority

The Cooperative Forestry Assistance Act (CFAA) of 1978, as amended, (16 U.S.C. 2101 et. seq.) provides authority for the U.S. Secretary of Agriculture (Secretary) to provide financial, technical, educational, and related assistance to States, communities, and private forest landowners. Section 1217 of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (P.L. 101-624:104 stat.3359; 16 U.S.C. 2103c), also referred to as the 1990 Farm Bill, amended the CFAA and directs the Secretary to establish the FLP to protect environmentally important forest areas that are threatened by conversion to nonforest uses. This authority continues indefinitely. Through the 1996 Farm Bill (Federal Agricultural Improvement and Reform Act of 1996; P.L. 104-127; Title III - Conservation; Subtitle G - Forestry; Section 374, Optional State Grants for Forest Legacy Program), the Secretary is authorized, at the request of a participating State, to make a grant to the State to carry out the FLP in that State, including the acquisition by the State of lands and interests in lands.

B. Purpose of the Forest Legacy Program

The purpose of the FLP is to ascertain and protect environmentally important forest areas that are threatened by conversion to nonforest uses.

FLP seeks to promote forestland protection and other conservation opportunities. Such purposes shall include the protection of important scenic, cultural, fish, wildlife and recreational resources, riparian areas and other ecological values. Traditional forest uses, including timber management, as well as hunting, fishing, hiking, and similar recreational uses are consistent with purposes of the FLP. Both purchased and donated lands and interests in lands through the use of conservation easements and fee-simple purchase are used to acquire forested land meeting Forest Legacy purposes from willing sellers or donors.

C. Delegations of Authority

The Secretary has delegated authority to administer all aspects of the FLP to the Under Secretary for Natural Resources and Environment (7 CFR 2.20(a)(2)(xvi)) who in turn has delegated the authority to the Chief of the Forest Service (7 CFR 2.60(a)(16)). Delegations only apply within the U.S. Department of Agriculture and its agencies. The role of State and Regional programs, and the right of States to elect the State Grant Option, are contained in the authorizing statute and these program implementation guidelines.

II. Description of Terms and Abbreviations

Assessment of Need (AON) is a document produced by a State, or a federally recognized Indian Tribe, in consultation with the State Forest Stewardship Coordinating Committee (SFSCC). The AON contains the an assessment of the forests and forest uses, a description of forces that are converting forests to nonforest uses, describes Eligibility Criteria developed by the State to identify important forest areas to be proposed as Forest Legacy Areas (FLA), and acts as a guide to implementation of FLP in the State.

describe actions to protect and manage soil, water, range, aesthetic quality, recreation, timber, and fish and wildlife resources, and other conservation values identified on the tract. Plans are to be prepared by a professional resource manager. A Forest Stewardship Plan that meets the requirements of the Forest Stewardship Program or a multi-resource management plan is required for FLP qualification. The State Forester or equivalent, or their designee must approve the plan. (See Appendix F for sample content of a Forest Stewardship Plan).

Full Fee Purchase is a land conveyance where a purchaser acquires all rights, title and interest in a property from a seller or owner. It is also known as fee simple or fee acquisition.

Geographic Regions are the collection of States that makeup the National Association of State Foresters (NASF) Regions. The three regions are: North (consisting of the States within the FS Northeastern Area), South (consisting of all the States within the FS Southern Region, and the Territories of the International Institute of Tropical Forestry), and the West (consisting of all the States within the FS Northern, Rocky Mountain, Intermountain, Southwestern, Pacific Southwest (including the Commonwealth of the Northern Mariana Islands, Guam and American Samoa), Pacific Northwest and Alaska Regions. (See Appendix B for a map of the Forest Service's Regions/Area/IITF)

Indirect costs relate to costs of the management and administration of the FLP. Indirect costs, unlike salary, which is a direct cost, are defined as costs not readily assignable to a specific legacy acquisition. (See OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments," for a description of indirect and direct costs).

In-kind contributions are non-cash contributions, including third-party contributions. In-kind contributions must be expenses necessary to accomplish program activities, and allowable if the Federal Government were required to pay for them. (See Appendix C for applicable OMB Circulars)

Interests in Land are a right, claim, or legal share in real property that are less than the full title.

Land Trust is a nonprofit organization, as described in 501(c) of the Internal Revenue Code of 1986, that protects land by working with landowners who wish to donate or sell fee title or conservation easements to maintain conservation values associated with the land.

Market Value is the amount in cash, or in terms reasonably equivalent to cash, for which in all probability the property would be sold by a knowledgeable owner willing but not obligated to sell to a knowledgeable purchaser who desires but is not obligated to buy. (*Uniform Appraisal Standards for Federal Land Acquisitions: Interagency Land Acquisition Conference, 2000, p.4.*)

Multi-State Entity is a government-established organization involving two or more States or Indian tribes whose jurisdiction encompasses all or portions of the land area of an FLA(s).

National Association of State Foresters (NASF) is the organization representing State forestry organizations in all 50 States, the territories and the District of Columbia.

Relocation refers to the provision in the Uniform Relocation Assistance and Real Estate Property Acquisition Policies Act of 1970 (PL 91-646 or 42 U.S.C. 4601) which requires Federal agencies and programs to pay for the relocation of a person displaced by a federally funded real estate transaction.

Reserved Areas are designated areas where nonforest uses (e.g. house, barn, remote recreation camps, etc.) are or will be allowed, but are inseparable from the land holding and do not have a detrimental effect on the conservation easement values. These areas shall be defined and described in the conservation easement and may be restricted in terms of their use, or provisions made through cost and time to cure and treatment. To the extent possible these areas of non-compliance should be excluded from the FLP project.

Reserved Interest Deed is where the grantee (government) acquires all rights, titles, and interests in a property, except those rights, titles, and interests that may run with the land that are expressly reserved by a grantor (landowner).

Secretary is the U.S. Secretary of Agriculture.

State refers to any of the 50 States, Puerto Rico, Guam, the United States Virgin Islands, the Commonwealth of the Mariana Islands, and American Samoa participating in the FLP.

State Forest Stewardship Coordinating Committees (SFSCC) are defined, and their duties are described, in Section 19(b) of the CFAA (16 U.S.C. 2113). They are chaired and administered by the State Foresters, or equivalent State officials, with membership composed of representatives from the following agencies, organizations, or individuals: Forest Service; Natural Resources Conservation Service; Farm Services Agency; Cooperative State Research, Education, and Extension Service; local government; consulting foresters; environmental organizations; forest products industry; forest land owners; land trusts; conservation organizations; the State fish and wildlife agency; and others determined appropriate by the Secretary. The SFSCC makes recommendations to the State lead agency regarding the AON, AON amendments, and the determination of project priorities.

State Lead Agency is that unit of State government responsible for coordinating the establishment and implementation of the FLP in the State, as designated by the Governor or pursuant to State law. The State lead agency is usually a forestry agency, but may be another natural resource agency.

Tribal Assessments of Need- An AON is developed by a federally recognized Indian Tribe in cooperation with the State and the SFSCC. Only nontrust allotment lands are eligible for FLP. Lands or interests in lands purchased under a Tribal FLP can be through a grant to a cooperating State or through the Federal acquisition option.

Working Lands Conservation Committee is a committee of the NASF having coordination and consultation responsibilities within that organization regarding the FLP.

State lead agencies may utilize the services of land trusts or other entities in preparing the assessment. Information from existing sources may be used to prepare the AON, instead of initiating new studies that would duplicate existing data. Examples of appropriate sources include State Forest Resources Plans, State Comprehensive Outdoor Recreation Plans, growth management studies, State cultural site inventories, inventories of threatened and endangered species, and other State, regional or local plans, studies or reports. The AON shall include relevant information about both public and private lands, address the issue of how best to maintain the integrity of forestlands for future generations, and address pertinent issues as identified by the State.

At a minimum, the AON must address the following as they relate to the purpose of the FLP:

1. Forest resources including:
 - Aesthetic and scenic values;
 - Fish and wildlife habitat;
 - Minerals resource potential;
 - Public recreation opportunities;
 - Soil productivity;
 - Forest products and timber management opportunities;
 - Watershed values including water quality protection;
2. The present and future threat of conversion of forest areas to nonforest uses. States are responsible for defining the conversion threat(s);
3. Historic uses of forest areas, and trends and projected future uses of forest resources;
4. Current ownership patterns and size of tracts, and trends and projected future ownership patterns;
5. Cultural resources that can be effectively protected;
6. Outstanding geological features;
7. Threatened and endangered species;
8. Other ecological values;
9. Public recreational opportunities;
10. Protected land in the State, to the extent practical, including Federal, State, and municipal lands and land trust organizations lands;
11. Issues identified by the SFSCC and in the public involvement process.

Using the above information the AON shall include the following:

1. Identification of applicable Eligibility Criteria;
2. Identification of specific FLA(s) for designation;
3. Specific goals and objectives to be accomplished by the FLP;
4. Process to be used by the State lead agency to evaluate and prioritize projects to be considered for inclusion in the FLP.

The project evaluation and prioritization process outlined in the AON should reflect the direction set forth in the CFAA to give priority to lands which can be effectively protected and managed, and which have important scenic or recreational values, riparian areas, fish and wildlife values including threatened and endangered species, or other ecological values. Traditional forest uses such as forest management activities, including timber management, and

environmentally important forest areas that are threatened by conversion to nonforest and be further developed through the AON.

FLA boundaries must encompass forestlands with significant environmental and other resource-based values. Areas may also include nonforested areas such as farms and villages if they are an integral part of the landscape and are within logical boundaries. Since FLA boundaries may not correspond to property boundaries, tracts located partially within the geographically defined FLA are eligible for the FLP, upon approval of a boundary adjustment by the FS Region/Area/IITF.

Indian reservations and tribal lands may have important features on the forested landscape. Indian tribes and States are encouraged to collaborate and to consider only nontrust allotment lands for designation as, or inclusion within, a FLA. Other tribal lands are already protected through the trust relationship between the U.S. Department of the Interior and the tribe and are ineligible for the FLP.

States are responsible for determining what defines “threatened” and “environmentally important forest areas” in the State. However, environmentally important forest areas shall contain one or more of the following important public values, as defined by the States:

1. Timber and other forest commodities
2. Scenic resources;
3. Public recreation opportunities;
4. Riparian areas;
5. Fish and wildlife habitat;
6. Known threatened and endangered species;
7. Known cultural resources;
8. Other ecological values.

The FS, State or unit of State or local government may only acquire lands and interests in lands identified within a FLA under FLP authority on a willing seller/willing buyer basis.

VII. AON and Amendment Approval

The State lead agency must submit the AON, including proposed FLAs and Eligibility Criteria, to the FS Region/Area/IITF. The FS Region/Area/IITF with input from the FS Washington Office reviews the AON and works with the State lead agency to complete the AON. Once finalized, the FS Washington Office forwards the AON to the Secretary for final approval. Final approval establishes the FLP for the State.

AONs shall be periodically reviewed (at least at 5-year intervals) by the State lead agency, the FS Region/Area/IITF, and the SFSCC to assess whether AON amendments or updates are necessary. The results of reviews will be documented by the State lead agency. AONs should be amended as needed.

The State lead agency may amend the AON to make significant changes or minor adjustments. Significant changes include modifications to their FLP, changes to the FLA Eligibility Criteria,

will ensure that national evaluation and prioritization criteria are communicated to the States and in a timely manner so that submitted projects adhere to strategic goals and objectives of FLP. Project selection steps are:

Step 1: Release Project Selection Calendar with Due Dates (See Appendix A for example)

The project selection process and calendar of due date milestones are developed in consultation with the States and FS Regions/Area/IITF and communicated by the FS Washington Office.

Step 2: State Project Prioritization and Submission

FLP project applications are accepted by the State lead agency as outlined in the State's AON. The SFSCC reviews and evaluates applications according to the criteria identified in the State's AON, authorizing statute, and other relevant direction and policy, and provides recommendations to the State lead agency. Projects approved and prioritized by the State lead agency are forwarded to the FS Region/Area/IITF for funding consideration. Only projects submitted through this process will be deemed eligible. Each State will prepare a list of projects and enter or update its list for submission to the FS via the Forest Legacy Information System or other means as requested.

Step 3: Forest Service Regional Review

FS Regions/Area/IITF will review submitted projects considering State priorities and national criteria. The purpose of this review is to improve project viability, facilitate the national project selection process and advance the strategic outcomes of the FLP. FS Regions/Area/IITF will submit projects to the FS Washington Office for funding consideration.

Step 4: National Review; Develop National Project List

The FS Washington Office will develop a prioritized national project list by convening a panel. There are 3 purposes of the panel; 1) assure that all projects meet Congressional and Administration direction; 2) assure that projects meet national program goals; and 3) develop a National List of ranked projects. The composition of the panel shall be developed annually in consultation between the State lead agencies and the FS, and will be representative of geographic regions. Project evaluation and ranking is based on the following national core criteria; project readiness will be considered as well as other evaluation considerations developed in consultation with State lead agencies and FS Regions/Area/IITF. The national core criteria are:

- Important – The public benefits gained from the protection and management of the property including environmental values, and the economic and social aspects;
- Threatened – Conversion to nonforest uses is likely or imminent and will result in a loss of forest values and public benefits; and
- Strategic – Fits with a larger conservation plan, strategy, and initiative and enhances previous conservation investments.

States newly entering FLP will be given a “New-State start-up” preference for an initial FLP project. This is a placeholder for planning purposes and does not guarantee project funding. In order to receive the New State start-up project funds the State must have an approved AON and the project must meet national core criteria and the State's

XI. Process for Allocating Funds to Forest Service Regions/Area/IITF

Following passage of the annual appropriations bill, the FS Washington Office develops the Forest Legacy Program Direction and allocates funds to the FS Regions/Area/IITF for distribution. The allocation process differs for each fund category described below.

A. Allocation of Project Funds

Allocations to FS Regions/Area/IITF are based on the results of the national project selection process and the appropriations bill. Under the State grant option, FS Regions/Area/IITF will award grants to States for specific, identified projects.

B. Allocation of Administration Funds

The FS Washington Office distributes administration funds to FS Regions/Area/IITF. Each FS Region/Area/IITF in consultation with the States requests these funds to meet their needs and the needs of the participating states in their Region/Area/IITF. Administration funds are also used by the FS Washington Office to fund program management functions. Administration funds will be granted to States under the State grant option separately from project funds.

C. Allocation of AON Preparation Funds

The FS Washington Office distributes AON preparation funds to the States by way of FS Regions/Area/IITF. These funds are requested by FS Regions/Area/IITF to meet the needs of their States to develop new AONs or amendments.

XII. Redirection and Reprogramming of Funds

Due to the nature of real estate transactions, FLP projects may change in scope, cost or fail completely. These changes can result in unspent or excess funds for some projects while others may need additional funding to bring them to completion. In order to maximize the efficient and effective use of FLP project funding, the FS will either redirect or request reprogramming of funds. Redirection is a shift of funds from one congressionally approved project to one or more other congressionally approved project(s). Reprogramming is a shift of funds that exceeds an increase or decrease of 10% per project not to exceed \$500,000 to an existing project, or shifting of any amount of funds to a project not previously approved by Congress.

Regional Redirection Process

FS Regions/Area/IITF may redirect up to an increase or decrease of 10% per project not to exceed \$200,000 of project funds that are excess or unspent from one project to one or more other Congressionally approved project(s) within the FS Region/Area/IITF which is underfunded and where there is a substantiated need (e.g. loss of other funding sources, appraisal documenting increased cost, etc.) to bring the project to completion. Project funds over \$200,000, or those that cannot be redirected by the FS Region/Area/IITF, will be released for the national process. FS Regions/Area/IITF will notify the FS Washington Office before a redirection takes place and report these actions periodically. All funds from failed projects will be released for the national process.

receive a maximum extension to five years. Allowable costs shall be determined in accordance with the 7 CFR 3016, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," and any amendments to this regulation (See Appendix C for list of applicable Office of Management and Budget (OMB) Circulars and other regulations).

Donations of land or interests in land must be documented to count as part of the nonfederal cost-share. The title does not need to be transferred to the State or federal government in order for the donation to qualify as cost share. However, if in the future, the donated lands are conveyed or the rights or title are modified in a way that is inconsistent with the purposes of the FLP then the State must restore the cost share value dedicated in the grant agreement. The value of donations may be included as part of the nonfederal cost-share if all of the following are met:

1. The donation contributes to the objectives and priorities of the State FLP as set forth in the AON;
2. All or part of the tract being donated must be within the boundaries of an FLA, and may include National Park, National Forest, National Wildlife Refuge, or other Federal land boundary, or within the boundaries of an area designated through an analogous State program with goals compatible with the FLP and be within an FLA;
3. The donor documents their desire that value of the interests may be used as cost share for the FLP project;
4. The donation of land or an interest in land must contain perpetual covenants to assure that the tract will be managed in a manner compatible with the goals for which the FLA was established;
5. The donee (holder of donated rights) is a unit of government or a non-profit conservation organization (land trust) that meets the eligibility requirements for holding a conservation easement established by the Internal Revenue Service and has as its purpose the management of lands or interests in land consistent with FLP purposes;
6. If the donation is in the form of a conservation easement then the deed needs to contain a provision that directs all of the easement holder's proceeds from a subsequent sale or exchange of interests in land be used in a manner consistent with the conservation purposes identified for the subject interests in lands;
7. The respective portion of the donation must not have been previously credited towards any Federal program's nonfederal cost share; and
8. The State lead agency approves the donation as contributing to the cost-share.

XIV. Acquisition of Lands or Interests in Lands

FLP acquisitions may be outright full fee purchases, or acquisition of development rights or other rights conveyed through a conservation easement. Except in the case of a full and complete donation of land or an interest in land, if any Federal funds are used in the acquisition of Forest Legacy tract the following shall apply:

1. Federal appraisal standards must be met, including appraisal review by a qualified Review Appraiser;
2. The landowner must be informed in writing of the market value and that sale of the

FLP need for baseline documentation.

Baseline documentation describes or depicts a tract of land and its attributes on the day it becomes restricted by an easement. This documentation is required on all FLP tracts and is completed prior to project closing. Documentation of the property should include a map of the area drawn to scale showing all existing man-made improvements or incursions such as roads, buildings, fences or gravel pits; an aerial photograph of the property taken as close to the date the property is restricted as possible; and on-site photographs, especially of significant features. The above should be accompanied by narrative descriptions of tract attributes and other pertinent information.

States and landowners are encouraged to display the official FLP signs on the FLP property using the signs in accordance with Appendix K. The posting of FLP tracts helps promote public awareness, recognition and support for the program. Landowner permission should be secured before posting any signs. Costs associated with sign posting can be covered by FLP project or administration grants or States may use such expenses as FLP cost share. Signs should be inspected during the annual monitoring of the FLP tract and repaired when in poor condition.

FLP sign art and program logos may be used by FLP partners for items that contribute to the purpose of awareness (e.g. brochures, workshops, outreach efforts, posters, FLP information packets, web sites etc.)

XV. Appraisal and Appraisal Review

The FLP policy on appraisal is that all FLP acquisition of land or interests in land using Federal funds must comply with Federal appraisal standards contained in the publication entitled "Uniform Appraisal Standards for Federal Land Acquisitions: Interagency Land Acquisition Conference, 2000," as amended or updated. Appraisals and appraisal reviews may be conducted by any qualified appraiser meeting the minimum standards outlined in Appendix H.

The FLP will ensure high quality appraisal service and accountability to the program by:

- Annual planning and coordination of appraisal work to allow for efficient allocation of resources.
- Requiring checks and balances:
 - States will ensure that qualified appraisers trained and competent in appraisal, appraisal review and knowledgeable of Federal standards will be used. The State may use State, contract or Federal appraisal or review services to meet this requirement.
 - States or the FS will review contract appraiser qualifications as stated in Appendix H before they are employed to conduct a FLP project appraisal or review.
 - The appraiser and identified review appraiser will engage in an initial consultation before the project appraisal takes place. The review appraiser will develop project specific appraisal instructions for the appraiser as a result of this consultation.

The State or easement holder shall promptly notify any future FLP tract owner of the FLP and the origin and requirements of the conservation easement.

The Forest Stewardship Plans covering the tract shall be reviewed periodically and updated as needed. If there is a change in land ownership, then the Forest Stewardship Plan needs to be reviewed, and updated as needed.

XVII. Landowner Participation

Landowner participation in the program is voluntary and consists of two elements:

1. Conveyance of lands and interests in lands to achieve the purpose of the FLP;
2. Preparation and periodic updates of a Forest Stewardship Plan or a multi-resource management plan. The landowner and the State Forester or designee must approve the plan prior to signing the acquisition of the easement. The plan shall include provisions to meet land conservation objectives of the FLP. The plan shall be kept current and updated as needed. Modifications of the plan must be agreed to by the State lead agency. A plan is not needed if the lands are purchased in fee. (See Appendix F for sample content of a Forest Stewardship Plan)

Landowners may submit an application and property information (See Appendix E) to the State lead agency to enroll their land or interests in lands in the FLP according to the process described in the AON. All owners of eligible forestlands within the designated FLA, and meeting the minimum Eligibility Criteria or other application requirements described in the AON, are eligible to submit an application.

For a landowner to participate in the program, it is not required that their tracts be completely forested. (see definition of "Nonforest Uses" and "Reserved Areas") However, priority will generally be given to tracts that are currently forested or are identified to be forested in the landowner Forest Stewardship Plan or multi-resource management plan.

The FLP respects the rights of private property holders. Under no circumstances shall the right of eminent domain be used for the unwilling "taking" of any private property rights. Traditional forest uses such as forest management activities, including timber management, and outdoor recreation opportunities are deemed consistent with purposes of the FLP and are encouraged on FLP tracts when consistent with the State's AON and the conservation purposes for FLP tract acquisition.

The FLP adheres to language contained in Section 14 of the CFAA, Statement of Limitation: "This Act shall not authorize the Federal Government to regulate the use of private land or to deprive owners of land of their rights to property or to income from the sale of property, unless such property rights are voluntarily conveyed or limited by contract or other agreement. This Act does not diminish in any way the rights and responsibilities of the States and political subdivisions of States." Purchase or donation of rights does not relieve landowners of regulations that would otherwise apply.

PART 2 - STATE GRANT PROGRAM

The State lead agency elects the State grant option of the FLP, in writing, to the appropriate FS Region/Area/IITF.

When a State elects the State grant option, all FLP acquisitions shall be transacted by the State with title vested in the State or a unit of State or local government. There are two exceptions:

1. Donations where the donor may wish to make a donation to a land trust, local, or Federal Government and the donee agrees to accept the donation, and to manage the lands or interests in lands in perpetuity for FLP purposes; and
2. At the request of the State and at the discretion of the FS, the FS may acquire individual tracts or multiple tracts within a specified FLA, with title vested in the U.S. in accordance with Part 3 of these guidelines.

I. Grants

If a State elects the optional State grant option, the FS will provide a Federal grant to the State to carry out the FLP, including the acquisition by the State of lands and interests in lands. Grants must be consistent with the uniform administrative requirements established in 7 CFR 3016. States will generally be reimbursed for costs incurred with cash advances limited to the minimum amounts needed and timed to be in accord only with the actual, immediate cash requirements of the State in carrying out the FLP. The timing and amount of cash advances shall be as close as is administratively feasible to the actual cash outlay by the State for direct program costs and the proportionate share of any allowable indirect costs.

A. Conditions of the Grant

1. States must submit annual performance and financial status reports. A final performance report and financial status report are required prior to close out of the grant.
2. Funds appropriated for the FLP shall not be included in consolidated-payment grants made under authority of Section 12 of the CFAA.
3. The State shall maintain current and complete financial records in accordance with requirements contained in the latest Federal Aid Manual and OMB Circular (See Appendix C).

B. Eligible Activities

The following activities are eligible uses of funds granted to States for the FLP; however, in most cases costs incurred prior to issuance of the grant cannot be reimbursed:

1. Purchase of lands or interests in lands from willing sellers for inclusion in the FLP;
2. Facilitation of donations of lands or interests in lands to a qualified and willing donee for FLP purposes;
3. Program administration expenses limited to indirect costs and direct acquisition related expenses for lands and interests in lands acquired under Forest Legacy authority;
4. Establishment and documentation of baseline conditions and development of a Forest Stewardship Plan for a conservation easement; and

2. Exchange for other FLP eligible lands or interests in lands of at least equal market value and of reasonably equivalent location, with public purposes that equal or exceed those of the disposed tract, with FS approval.

Items 1 and 2 identified above must be included in deeds or conservation easements of all FLP tracts as well as in the FS grant to the State. Appendix I includes suggested language for conservation easements and deeds.

monitoring, and capital improvement expenses. The terms of a MOU will determine which party is responsible for costs incurred following the project's five-year cost-share write off period.

If individual Forest Legacy tract-MOUs are needed, they become an addendum to the State level "umbrella" MOU. The umbrella MOU between the State lead agency and the FS shall be developed following the Secretary's approval of the State's AON and the establishment of the State's FLP.

The FS/State MOU is for the purpose of specifying roles and responsibilities for implementing the program, and may address the following items:

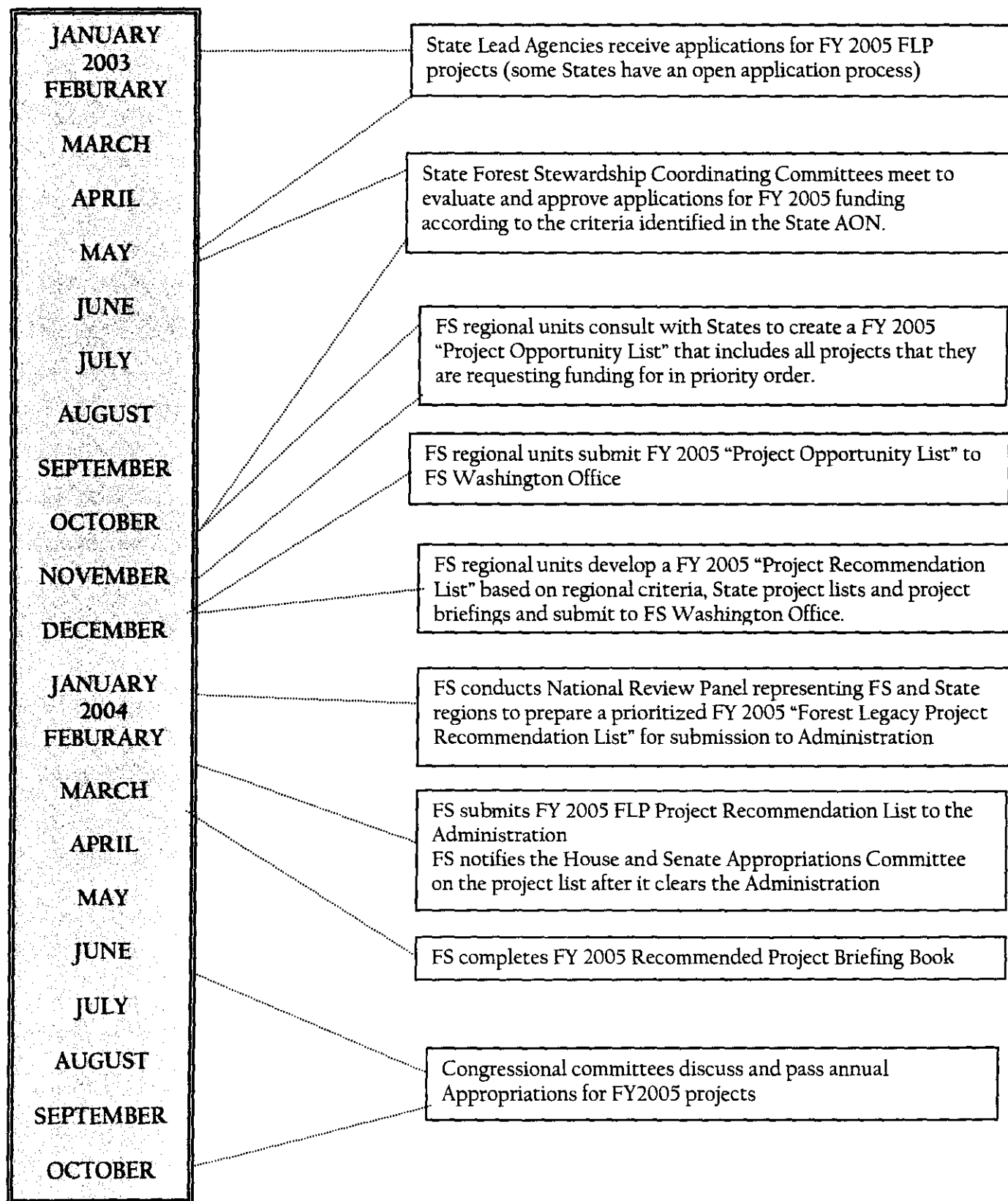
1. Costs and Funding:
 - a. Identify direct and indirect costs expected to be incurred in establishing the FLP, and acquiring and administering interests in lands during the first five years of the program. Revise or renew these cost estimates as appropriate.
 - b. Identify and propose sources of cost-share matches.
2. Planning:
 - a. Document the amount of work required to complete the AON and identification of FLAs.
 - b. Define a process for revising existing landowner Forest Stewardship Plans, or multi-resource forest management plans.
 - c. Identify how specific tract acquisition needs and priorities shall be established by the State.
3. Acquisition:
 - a. Identify who is responsible for title work, appraisals, surveys, and similar pre-acquisition work.
 - b. Define a process for determining the value of donated interests in lands.
4. Management:
 - a. Define responsibilities for management of interests in lands acquired or dedicated to the program.
 - b. Identify possible activities needed to enhance, restore, or maintain resources to meet the intent of the program and general responsibilities in carrying out such activities.
5. Administration:
 - a. Estimate the staff-work required to implement the Program.
 - b. Define responsibilities for processing applications to the FLP.
 - c. Establish procedures for monitoring and enforcement the terms of reserved interest deeds and easements and identify who will be responsible.
 - d. Identify responsibilities for periodic reports summarizing the achievement of FLP goals in the State.

III. Payment in Lieu of Taxes (PILT)

Where the Federal Government under the FLP acquires lands in fee, the Federal Government will pay PILT to the local taxing authority. No PILT will be paid on conservation easements.

APPENDIX A- Example of a Project Selection Calendar

This flowchart outlines the basic FLP project selection process.



APPENDIX C- Office of Management and Budget (OMB) Circulars and Other Regulations

Any award of Federal financial assistance under these guidelines will be subject to the following or its most recent update:

1. OMB Circular A-102 (10/7/1994, amended 8/29/1997), "Grants and Cooperative Agreements with State and Local Governments"
2. OMB Circular A-87 (5/4/1995, amended 8/29/1997), "Cost Principles for State, Local, and Tribal Governments" as implemented by Departmental Regulation 7 CFR 3016, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"
3. OMB Circular A-110 (11/19/1993, amended 09/30/1999), "Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations"
4. OMB Circular A-122 (6/1/1998), "Cost Principles for Non-Profit Organizations"
5. OMB Circular A-133 (06/24/1997), "Audits of States, Local Governments, and Non-Profit Organizations" as implemented by Departmental Regulation 7 CFR 3050, "Audits of State and Local Governments" OMB Circular A-89 (8/17/1984), "Catalog of Federal Domestic Assistance"
6. 7 CFR 3017, Government Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants), and
7. 7 CFR 3018, New Restrictions on Lobbying.
8. 7 CFR 3019, Uniform administration requirements (Higher education, hospitals, and non-profit organizations"

Example 2- John Doe Ranch is planning to conserve 6,500 acres of land. The total cost of protecting the land is \$4 million. The Federal contribution, through FLP, will be \$1,000,000, and the non-Federal contributors will provide \$3,000,000, which includes a cost-share component for the FLP.

Total Project Costs	Federal FLP Contribution	Non-Federal FLP Contribution	Other Federal Contribution	Other non-Federal Contribution
\$4,000,000	\$1,000,000	\$333,000	\$0	\$2,667,000

- Federal contribution cannot exceed \$3,000,000; therefore, the Federal contribution is not greater than 75% of the total project costs.
- The non-Federal cost share requirement is at least \$333,000; therefore, FLP funds are adequately cost shared.

Example 3- ABC Tree Company is planning to conserve 8,300 acres of land. Both the Forest Service's FLP and the U.S. Fish and Wildlife Service (FWS) are contributing funds toward the project. Non-Federal money has been secured to cover the non-Federal cost share requirements for the FLP and FWS requirements, as well as to pay for additional project costs.

Total Project Costs	Federal FLP Contribution	Non-Federal FLP Contribution	Other Federal Contribution	Other non-Federal Contribution
\$4,000,000	\$1,000,000	\$333,000	\$1,000,000	\$1,667,000

- Federal contribution cannot exceed \$3,000,000; therefore, the Federal contribution is not greater than 75% of the total project costs.
- The non-Federal cost share requirement is at least \$333,000; therefore, FLP funds are adequately cost shared.
- FLP cost share component cannot be the same as the FWS cost share component.

APPENDIX F- Sample Content of a Forest Stewardship Plan

Below is information from the Forest Stewardship Program's *National Standards and Guidelines*. Please also refer to the Forest Stewardship Program's *Planning for Forest Stewardship: A Desk Guide* as well as States' Statewide Forest Stewardship Plans for additional information on Forest Stewardship Plans.

Landowner Forest Stewardship Plans must:

- be prepared or verified, as meeting the minimum standards of a forest stewardship plan, by a professional resource manager.
- identify and describe actions to protect, manage, maintain and enhance relevant resources listed in the law (soil, water, range, aesthetic quality, recreation, timber, water, and fish and wildlife) in a manner compatible with landowner objectives.
- be approved by the State Forester or a representative of the State Forester.
- involve the landowner in the plan development by setting clear objectives and should understand clearly the completed plan.

A well prepared plan will:

- Clearly state landowner objectives.
- Have a cover page.
- Provide for authorship and/or signature lines within the document.

The plan preparer should consider and evaluate resource elements present and include a brief description of those that are applicable and their importance to the ownership. Resource elements to be considered are:

- Soil Interpretations
- Water
- Range
- Aesthetic Quality
- Recreation
- Timber
- Fish
- Wildlife
- Forest Health
- Archeological, Cultural and Historical Sites
- Wetlands
- Threatened and Endangered Species

Management recommendations, or where appropriate, alternative strategies should be provided for those resource elements described. Prescriptions or treatments should be integrated and stand or site specific. An ownership map drawn to scale, or photo, to include vegetation cover types, stream and pond location with a legend will enable the landowner to implement the plan.

APPENDIX G- Real Estate Record Keeping

Since Forest Legacy acquisitions are perpetual, record keeping is important. Each State shall maintain permanent records for all Forest Legacy properties. The following information is recommended to be maintained by the conservation easement holder:

- A. Landowner information (name, address, phone)
- B. Nomination form (including notification to landowner that property will not be purchased if negotiations do not result in amicable agreement)
- C. Landowner Inspection Consent Agreement
- D. Baseline documentation
- E. Option agreement
- F. Deed of Conservation Agreement
- G. Additional warranty deeds, covenants, restrictions
- H. Title Insurance Policy
- I. Appraisal
- J. Appraisal review
- K. Forest Stewardship Plan or equivalent
- L. Notification of county or local government
- M. Closing statement
- N. Copies of check or documentation of EFT or other form of payment
- O. Copies of grant reimbursement or expenditure

The following items should also be maintained as part of the record:

- 1. Landowner correspondence
- 2. Evaluation criteria
- 3. Tracking/documentation of negotiation steps
- 4. State Forest Stewardship Coordinating Committee recommendation
- 5. Press release
- 6. Monitoring records/history

- b. has, within the past 10 years, completed at least the minimum classroom hours of non-duplicative education prescribed for the certified general real property appraiser classification by the Appraisal Standards Board of The Appraisal Foundation and at least 32 classroom hours of approved training in appraisal review, or otherwise demonstrates competency in appraisal review in compliance with the Competency Rule of the *Uniform Standards of Professional Appraisal Practice* (USPAP), and
- c. has completed at least 12 self-contained or summary appraisal reports of properties similar to the appraised property in the preceding three years or at least 12 technical appraisal review reports for appraisal reports of properties similar in scope and complexity to the appraised property in the preceding three years, and
- d. has completed training in application of the December 2000 edition of *Uniform Appraisal Standards for Federal Land Acquisitions* approved for appraiser continuing education credit in the state where the reviewer is certified.

The qualified review appraiser shall prepare a technical appraisal review report that includes a determination of whether the appraisal report under review complies with the *Uniform Appraisal Standards for Federal Land Acquisitions*.

Federal land acquisition agencies are the member agencies of the Interagency Land Acquisition Conference.

*The seminar, *Federal Land Exchanges and Acquisitions: Appraisal Issues and Applications*, offered by the American Society of Farm Managers and Rural Appraisers and the Appraisal Institute is the only acceptable substitute for UASFLA training.

forever in its existing natural, scenic and forested condition and to prevent any use of the Property that will significantly impair or interfere with the conservation values of the Property. The Grantor intends that this easement will confine the use of the Property to such activities specifically enumerated herein which are consistent with the overall purposes of the easement by protecting the following particular values of the easement area: specifically the scenic, cultural, fish, wildlife and recreational resources, riparian areas and similar ecological values.

Example 3:

WHEREAS, the clearly delineated open space conservation goals and objectives as stated in Forest Legacy Program pursuant to Section 1217 of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (16 USC Section 2103C) which was created "to protect environmentally important private forest lands threatened with conversion to non-forest uses" has awarded a Forest Legacy grant in to the Grantors for purchase of a portion of the value of the Easement herein conveyed for a conservation easement on forestal, agricultural, and open space land.

Example 4:

The purpose of this easement is to effect the Forest Legacy Program in accordance with the provisions of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (16 U.S.C. 2103c) on the herein described land, which purposes include protecting environmentally important forest areas that are threatened by conversion to nonforest uses and for promoting forest land protection and other conservation opportunities. The purposes also include the protection of important scenic, cultural, fish, wildlife and recreational resources, riparian area, and other ecological values.

Example 5:

The purpose of this conservation easement is to restrict the exercise of all development rights, residential, commercial or otherwise, on the easement area and to protect the scenic and recreational values of said easement area from conversion to non-forest uses while at the same time allowing for the use of the area for commercial forestry and public recreation purposes consistent with the stated purposes, standards and general intent expressed in Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (16 USC 2103c) and the requirements of Section 7 for the Forest Legacy Program.

B. Reversion Clause:

The Easement Holder acknowledges that this Easement was acquired with Federal funds under the Forest Legacy Program (P.L. 101-624; 104 Stat. 3359) and that the interest acquired cannot be sold, exchanged, or otherwise disposed, except as provided in Section 5.A, unless the United States is reimbursed the market value of the interest in land at the time of disposal. Provided, however, the Secretary of Agriculture may exercise discretion to consent to such sale, exchange, or disposition upon the State's tender of equal valued consideration acceptable to the Secretary.

9. Archeological, Cultural and Historical Features
 - Archeological, cultural and historical sites and resources found within the property, with a focus on those resources that the easement seeks to protect.
10. Human Created Features
 - Improvements (structures, trails, fences, wells, power lines, pipelines, irrigation systems, etc.)
 - Recreation/tourism attractions
 - Trespass damage and disturbed land (stray animals, introduced species evidence of vehicular trespass, etc.)
11. Photographs
 - Aerial photos, if appropriate
 - On-site photos (be sure to record key photo points, record distance and azimuth from structures or other fixed points, and sign and date all photos)
12. Maps
 - A state map showing easement location
 - An 8 1/2" X 11" section of a local road map showing easement location
 - The largest scale U.S. Geological Survey topographical map available (usually at a scale of 1:24,000, called a 7-1/2 minute scale), showing easement boundaries
13. Survey
 - Surveys generally are not required, but may be helpful

For additional Information on Baseline Documentation:

Land Trust Alliance. 2001. *Working Forest Conservation Easements*.

Land Trust Alliance and Trust for New Hampshire Lands. 1991. *The Conservation Easement Stewardship Guide*.

Land Trust Alliance and Trust for Public Land. 1988. *The Conservation Easement Handbook*.

WKOP Operations and Management Funding Scenarios:

1). Minimal operations cost:

Minimal Signage for safety	\$3000
ANNUALLY:	
- Basic peripheral Invasive Species Control	\$2000/yr
- DLNR Vehicle Usage	\$2000/yr
- Fire Pre-suppression	\$1000/yr
- Endangered Species Mgmt	\$5000/yr
- Basic Field Staff Time	\$4000/yr
- Misc. expenses	\$3000/yr (fence materials, helicopter time, cement, etc. as needed)
- Access Improvements-	\$8000/yr (trails and roads maintenance/repairs and reforestation of cleared areas)
- Administrative costs	\$10,000
- Utilization of DOFAW Base yard Office space	\$5,000
- Minimal enforcement	\$10,000
TOTAL	\$53,000

2). Improved operations cost:

Minimal Signage for safety	\$3000
ANNUALLY:	
- Basic peripheral Invasive Species Control	\$2000/yr
- DLNR Vehicle Usage	\$2000/yr
- Fire Pre-suppression	\$1000/yr
- Endangered Species Mgmt	\$5000/yr
- Basic Field Staff Time	\$4000/yr
- Misc. expenses	\$3000/yr (fence materials, helicopter time, cement, etc. as needed)
- Access Improvements	\$8000/yr (trails and roads maintenance/repairs and reforestation of cleared areas)
- Administrative costs	\$10,000
- Utilization of DOFAW Base yard Office space	\$5,000
- Minimal enforcement	\$10,000
- Fire suppression capacity	\$10,000
- Management plan development	\$30,000
- Environmental Assessments	\$20,000
- Expansion of hunting program	\$10,000
- Establishment of permit system	\$5,000
TOTAL	\$75,000 + \$53,000 = \$128,000

Approval by OHA
Hq 8/25/05

Chairperson Apoliona: Amendment has passed. Now we go to the main motion as amended.

Main Motion as Amended

Trustee Carpenter: **I move to pass the main motion as amended.**

Trustee Machado: **Second.**

Chairperson Apoliona: Any discussion members?

Trustee Akana: Yes Madame. Madame Chair, I want to make it very clear for the record I want to be quoted um...verbatim that I support this project 100%. The reason I am going to vote no is because I don't agree with the increase of another \$100,028.00 to this budget. I strongly believe that the DLNR should take some responsibility for some of these costs and not let OHA bear these costs. Also, in the budget it calls for \$30,000.00 a year, per year, for this Coordinator to have a car and by the end of 10 years he is going to be driving a Mercedes or some other kind of car. I mean, I just think the budget is very inflated and the way it is put together I cannot support.

Trustee Carpenter: Madame Chair, just to make sure we clearly understand. Everything is subject to negotiations. Obviously we are not going to buy a \$300,000.00 vehicle over the space of 10 years. I also would like to commend the gang from TPL, for helping to forge this particular alliance. I would also like to thank the Pele Defense Fund. The County of Hawaii and Dr. Scheuer of OHA. And finally, Peter Young and your staff.

Chairperson Apoliona: Let's take the vote. Roll call vote please.

Roll Call Vote
Main Motion as Amended

To authorize the Administrator to enter into agreements to acquire and manage two contiguous parcels of land in Puna, Hawaii, known as Wao Kele O Puna (Tax Map Keys: 1-2-10-2 and 1-2-10-3) hereinafter referred to as the Wao Kele O Puna parcels. The purposes of this acquisition are to maintain the natural and cultural resources of the parcels, to protect the exercise of traditional and customary rights by Native Hawaiians on the parcels, and to ensure the parcels pass to the Nation. The Administrator is specifically authorized to:

- a. **Negotiate and enter into an acquisition agreement on behalf of OHA for the Wao Kele O Puna parcels with the Trust for Public Land (TPL), utilizing TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$250,000.00) of OHA funds and THREE MILLION FOUR HUNDRED THOUSAND AND NO/100 DOLLARS (\$3,400,000.00) of federal Forest Legacy funds to complete the purchase. OHA funds will be transferred from the FY 05-06**

Budget cost center 215 (PEG), Object Code 56510 (New GSPD / BOT Initiatives) to cost center 320 (NRLC).

- b. Negotiate and enter into agreement(s) on behalf of OHA with the Department of Land and Natural Resources (DLNR), State of Hawaii, to secure management of the Wao Kele O Puna parcels as a forest reserve designated under Chapter 183, HRS (Forest Reserves, Water Development, Zoning), and to transfer up to \$228,000.00 (two-hundred twenty eight thousand dollars) from cost center 215 (PEG), Object Code 56510 (New GSPD / BOT Initiatives) to cost center 320 (NRLC) in the fiscal year 05-06 Budget, to assist DLNR and other entities, including Pele Defense Fund (PDF), to manage those parcels.
- c. Authorize the Administrator to request continuing funding of up to \$228,000.00 (two-hundred twenty eight thousand dollars) on an annual basis into cost center 320 (NRLC) for the purpose of contributing towards the cost of maintaining the Wao Kele O Puna parcels commencing in fiscal year 06-07 until such time as OHA can assume management of the WKOP parcels; and
- d. Work with and if necessary negotiate and enter into agreements with TPL, DLNR, the County of Hawaii, and other entities to plug and to abandon the geothermal well on the Wao Kele O Puna parcels, Well KA1-1. The Administration will present to Board of Trustees the amount required to plug and abandon the well and OHA's contribution for such work subject to further approval by the Board of Trustees.
- e. To develop a process to ensure that the parcels pass to the Native Hawaiian Governing Entity.

TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE ROWENA AKANA			YES(2)		Kanalua(1)	
TRUSTEE DANTE CARPENTER	1		YES			
TRUSTEE DONALD CATALUNA			YES			
TRUSTEE LINDA DELA CRUZ			YES(2)		Kanalua(1)	
TRUSTEE COLETTE MACHADO		2	YES			
TRUSTEE BOYD MOSSMAN			YES			
TRUSTEE OSWALD STENDER			YES			

**MINUTES FOR THE
MEETING OF THE
BOARD OF LAND AND NATURAL RESOURCES**

DATE: FRIDAY, SEPTEMBER 9, 2005
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

Chairperson Peter Young called the meeting of the Board of Land and Natural Resources to order at 9:14a.m. The following were in attendance:

MEMBERS

Mr. Peter Young
Mr. Ted Yamamura
Mr. Gerald DeMello
Ms. Taryn Schuman

Mr. Tim Johns
Mr. Ron Agor
Mr. Toby Martyn

STAFF

Mr. David Gaud, DOCARE
Mr. Sam Lemmo, OCCL
Ms. Christine Ogura, DOFAW
Mr. Mike Shinozuka, DOT
Ms. Holly McEldowney, Parks

Mr. Russell Tsuji, Land
Mr. Paul Conry, DOFAW
Mr. Dwayne Meadows, DAR
Ms. Lauren Tanaka, Parks

OTHERS

Ms. Pam Matsukawa, Deputy Attorney General
Mr. Max Graham, K-1
Mr. Bill Byrns, D-12
Mr. Jim Romy, E-1
Mr. Ed Holland, E-1
Mr. Campbell Cavasso, E-1
Mr. Sam Blair, E-1
Mr. Rick Ralston, E-1

Dr. Jonathan Schuer, C-3
Mr. Frank Hay, E-1
Mr. David Bettencourt, E-1
Mr. Edward Wels, E-1
Mr. Don Carswell, E-1
Mr. Paul Matsunaga, E-1

{Note: language for deletion is [bracketed], new/added is underlined}

File copy

Item A-1: Minutes of August 26, 2005

Unanimously approved as submitted (Johns/Yamamura).

Item B-1: Request Board Delegation of Police Powers to Conservation and Resources Enforcement Officers of the Division of Conservation and Resources Enforcement and Authorizes the Chairperson to delegate Police Powers and to Appoint and Commission Conservation and Resources Enforcement Officers.

David Gaud, Assistant Enforcement Chief of the Division of Conservation and Resource Enforcement (DOCARE) requested the Board appoint and commission the list of officers attached to the submittal as well as authorize the Chairperson to appoint and commission Enforcement officers.

Unanimously approved as submitted (Johns/Yamamura).

Item C-3: Memorandum of Agreement to Assist the Office of Hawaiian Affairs in the Acquisition and Management of 25,856 Acres of Land from the Estate of James Campbell at Wao Kele O Puna for the Preservation of Natural and Cultural Resources; Designation of the Area as a Forest Reserve; Disposition of the R-5 Lease and License Agreement for the Property; and Removal of the Geothermal Resource Subzone for the Property.

Member Johns conveyed that he has been involved with the Trust for Public Lands on fundraising matters as he was a part of their Board.

Paul Conry, Administrator of the Division of Forestry and Wildlife (DOFAW) let it be known the lands known as Wao Kele O Puna (WKOP) is currently in the hands of private owners. A little over two years ago the Department was approached by the Office of Hawaiian Affairs (OHA) to see if we were interested in working on a partnership through the Forest Legacy Program to purchase the subject property. The Department has since amended their Forestry Legacy Program to include this process to obtain the subject lands. Recently the asking price of the property has increased by \$250,000. OHA approached DLNR offering to provide the \$250,000 to enable the purchase of the property and expressed an interest in adding land ownership and management to their overall mission. The Department is supportive of OHA's interest in developing its capacity, experience and expertise in land management and in ensuring that this property is secured for long-term conservation management. Staff has been working with OHA to enable OHA to purchase the property and DLNR to provide management activities in the interim until OHA is ready to assume management responsibilities. Mr. Conry went over the major elements of the Memorandum of Agreement, which addressed eleven issues. Mr. Conry recommended the Board approve in concept the general terms of the MOA to assist OHA in the purchase and management of the Wao Kele O Puna tract, authorize the Chairperson to negotiate and sign the MOA on behalf of the Board and Department, authorize the Chairperson to negotiate and sign on behalf of the Board agreements to terminate the Geothermal Mining Lease R-5 and bifurcate the Well Monitoring License Agreement and authorize the Chairperson

↑
(to divide into
2 branches or parts) 2

to hold public hearings to designate the Wao Kele O Puna tract as a forest reserve and remove the Geothermal Resource Sub Zone designation on the site.

Dr. Jonathan Scheuer of the Office of Hawaiian Affairs read a letter from its administrator, Clyde Namuo, in support of staff's recommendation.

The Trust for Public Lands noted their support of staff's recommendation.

Written testimony was received from the Sierra Club.

Unanimously approved as submitted (DeMello/Johns).

Item K-1: Request to Amend Title 13, Chapter 5, Hawaii Administrative Rules (Chap 13-5 HAR) Related to Single Family Residential Standards at Haena, Kauai.

Sam Lemmo, Administrator of the Office of Conservation and Coastal Lands (OCCL) let it be known the petitioner is requesting a change to amend Section 13-5-41 of the Hawaii Administrative Rules. As the rules now stand the minimum lot size for a single-family residence is 10,000 square feet. The petitioner submitted an application for a single-family residence for their lot in Haena but their application was rejected, as the size of the lot was 7,931 square feet. As background information, Mr. Lemmo reminded the Board of the policy they adopted in which they allowed one house per lot within the Haena Hui partition approved by the courts in 1967. In 1994, Title 13-5, HAR were adopted. The rules included a new provision requiring minimum lot size of 10,000 square feet for single-family residence. This rule precluded the construction of single-family residences on lots less than 10,000 square feet on lots within the Haena Hui partition. A request by staff to hold public hearings on this matter was granted and held on Kauai. Mr. Lemmo recommended the Board approve the petitioners' request to amend Section 13-5-41 of the Hawaii Administrative Rules inclusive of all amendments as proposed in Exhibit A of staff's submittal and authorize the forwarding of the rule amendment to the Governor for approval and enactment.

Max Graham, attorney for the petitioner's was present.

Unanimously approved as submitted (Agor/Johns).

Item K-2: Amendment to Conservation District Use Application (CDUA) KA-3240 for Kikiaola Small Boat Harbor Project (Navigation Improvement, Beach Nourishment).

Mr. Lemmo pointed out the US Army Corps of Engineers indicated they have a problem with the August 26, 2005 Board approval of CDUP KA-3240 for improvements to the Kikiaola Small Boat Harbor. Their problem is with Condition No. 1 and No. 8 which calls for the permittee to indemnify and hold the State of Hawaii harmless and that no motorized construction equipment be operated in the water. Mr. Lemmo recommended the Board approve this request to delete Condition No. 1 and Condition No. 8 of the CDUP KA-3240 for improvements to the Kikiaola Small Boat Harbor, Phase I and Phase II.

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawaii 96813

September 9, 2005

Chairperson and Members
Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Land Board Members:

SUBJECT: Memorandum of Agreement to Assist the Office of Hawaiian Affairs in the Acquisition and Management of 25,856 Acres of Land from the Estate of James Campbell at Wao Kele O Puna for the Preservation of Natural and Cultural Resources; Disposition of the Geothermal Mining Lease R-5 and Well Monitoring License Agreement for the Property; and Approval to Conduct Public Hearings to Designate the Area as a Forest Reserve and Remove the Geothermal Resource Subzone Designation on the Site

Background:

The Estate of James Campbell owns three parcels of land (27,786 acres) in the Puna district that collectively make up what is known as Wao Kele O Puna (WKOP). This forested area is situated along the east rift zone of Kilauea Volcano within the Puna district. The specific parcels are Tax Map Keys: 1-2-10-2 and 1-2-10-3 constituting 25,856 acres in conservation districts, and TMK: 1-2-10-1 which is 1,930 acres in agriculture district. The property is comprised of a combination of dense native 'Ohi'a forests, and a variety of rare native tree and plant species. The area also consists of lava flows where kipuka serve as seed banks for future generations of forests in the area as well as for the Volcano National Park. This unique forest is the last large intact lowland rainforest ecosystem in the State and was once the home to countless culturally significant uses.

The Estate of James Campbell is under mandate to dissolve by January 20, 2007 and has placed a high priority on selling these parcels, which is currently on the market. The Trust for Public Lands (TPL), as well as many communities and local groups have long been interested in preserving WKOP and began negotiations for the purchase of two of the three parcels two years ago. In June 2004 TPL requested that DLNR apply for funding from the USDA Forest Service's Forest Legacy Program to acquire the two conservation district parcels.

Land found to be eligible for Forest Legacy funding must follow specific criteria that are detailed in the State Assessment of Needs (AON). In November 2004 the State amended the 1994 AON by changing the criteria used to designate Forest Legacy Areas. This amendment resulted in

ITEM C-3

more eligible land on all of the major islands; see Attachment I, including more land in lower Puna.

Another important amendment to the AON was choosing the State Option instead of the previously used Federal Option. This is significant because it allows the State to hold all titles to future Forest Legacy purchased parcels.

Current Situation:

The State submitted an application to the Forest Legacy Program for fee simple title acquisition of WKOP in the Federal fiscal year 2006 (Attachment II). The Department was recently informed that this application received the full \$3.4 million in federal funds requested for the acquisition. However, due to increases in the final negotiated sale price, the Department lacks \$250,000 for this acquisition. The Office of Hawaiian Affairs (OHA) approached DLNR offering to provide the \$250,000 to enable the purchase of the culturally important property, and expressed an interest in adding land ownership and management to their overall mission.

The Department is supportive of OHA's interest in developing its capacity, experience and expertise in land management and in ensuring that this property is secured for long-term conservation management. Consequently, DLNR and OHA drafted a Memorandum of Agreement (Attachment III) that outlines the details, funding, management, legal issues, future land designations, and other conditions that would enable OHA to purchase the property and DLNR to provide management activities in the interim until OHA has acquired the capacity to take over full management responsibilities and developed its own land management rules and regulations. The attached draft MOA is the latest in our discussions with OHA and that it is subject to change based on negotiations with OHA and others, as well as based on recommendations with the Attorney General. The major elements of the Memorandum of Agreement (MOA) are listed below.

1. **Compliance with Federal Grant Requirements.** Management and use of the WKOP Property shall be executed in compliance with all applicable Federal Grant requirements and those found in the Forest Legacy Program Guidelines (attached to the MOA).
2. **Management Responsibility.** OHA and DLNR shall bear the responsibilities for the management and maintenance of the WKOP Property, including but not limited to, any geothermal well sites, until OHA is capable of taking over responsibilities for Management. The DLNR and OHA shall provide management services in a manner consistent with any Federal Grant requirements and current State requirements for forest reserves.
3. **Timeline.** A three year period will be utilized to, develop the management plan, work with the State of Hawai'i Legislation to acquire funds for plugging and abandonment of the geothermal well located inside WKOP, and other appropriate issues. Triennially, the OHA and DLNR Boards will meet to monitor and assess all management, transfer of knowledge, and maintenance actions and continuation of the agreement.

4. Management Responsibilities/Transfer of Knowledge. It is DLNR's goal to relinquish to OHA all management duties and responsibilities related to the WKOP property as soon as possible and within a 10-year period. Transfer of Management Responsibility shall follow the agreed management plan guidelines. The plan shall define how, over time, the Parties will share responsibility for management of the WKOP Property. At such time as OHA is capable, full management responsibilities of the plan shall be relinquished from DLNR to OHA.
5. Forest Reserve Designation. The Parties agree to work expeditiously and in good faith to have the WKOP Property designated as a Forest Reserve pursuant to HRS Chapter 183 and to thereafter be jointly managed as a Forest Reserve by OHA and DLNR. This will establish DLNR's management and enforcement authority for the property.
6. Management Plan. Upon execution of this Agreement, the parties agree to cooperate to develop a Comprehensive Management Plan (Plan) for the WKOP Property.
7. Mineral Rights Lease Agreements. The rights and obligations that exist under the current lease will continue until otherwise terminated. OHA and the Department are in agreement to terminate Geothermal Mining Lease R-5 issued to the Estate of James Campbell allowing geothermal resource extraction.
8. License Agreement. The State's obligations and rights of the well monitoring license agreement will continue until otherwise terminated. OHA and DLNR are in agreement to bifurcate the existing well monitoring license agreement with the Estate of James Campbell and to ensure that the Trust for Public Lands and OHA retain their rights under the agreement that the State will close the well.
9. Well Plugging and Abandonment. The agreement provides that DLNR and OHA shall work together to secure funding for plugging and abandonment of the KA1-1 and encourage the County of Hawaii to partner and share the cost at 50%, 20% and 30% respectively.
10. Management Funding: Subject to OHA Board of Trustees approval, OHA will contribute up to TWO HUNDRED TWENTY EIGHT THOUSAND AND NO/100 DOLLARS annually for the development of a management plan, establishing management capacity, and active management practices. Subject to approval of the DLNR Board of Land and Natural Resources, DLNR will contribute up to ONE HUNDRED THOUSAND AND NO/100 DOLLARS annually, either in appropriated funds (obtained from various sources) or in-kind services.
11. Geothermal Subzone Designation Removal. DLNR and OHA shall work together to remove the Geothermal Resource Subzone designation specified under HRS §§ 205-5.1 and 205-5.2, from the WKOP Property.


The Department supports OHA's efforts to develop the capacity to manage land and secure the WKOP property in perpetuity for the protection and management of its natural and cultural resources. The Department also supports working with the various parties to expeditiously terminate the Geothermal Mining Lease R-5, the Well Monitoring License Agreement and Geothermal Subzone designation now in effect and to close the nonproductive geothermal wells on the property, removing this as a potential source of liability in the future.

RECOMMENDATIONS:

That the Board of Land and Natural Resources:

- 1) Approves in concept the general terms of the MOA to assist OHA in the purchase and management of the Wao Kele O Puna tract.
- 2) Authorize the Chairperson to negotiate and sign on behalf of the Board and Department the MOA, as amended by further negotiations with OHA and review and approval by the Attorney General.
- 3) Authorize the Chairperson to negotiate and sign on behalf of the Board agreements to terminate the Geothermal Mining Lease R-5 and bifurcate the Well Monitoring License Agreement with the Estate of James Campbell, subject to review and approval by the Attorney General.
- 4) Authorize the Department to hold public hearings to designate the Wao Kele O Puna tract as a forest reserve, and remove the Geothermal Resource Sub Zone designation on the site.

Respectfully submitted,


PAUL J. CONRY
Administrator

Attachments:

Attachment I – Map of Forest Legacy Areas in Hawaii.

Attachment II – FY 2006 WKOP Application for funding from Forest Legacy Program

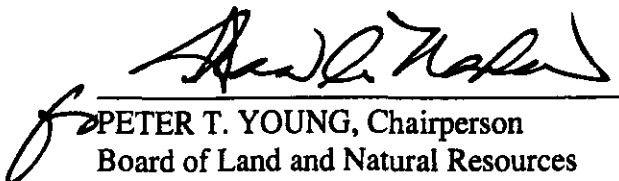
Attachment III – Draft Memorandum of Agreement between OHA and DLNR

Exhibit A – Description of Property

Exhibit B – Forest Legacy Program Implementation Guidelines

Exhibit C – WKOP Operations & Management Funding Scenarios

APPROVED FOR SUBMITTAL:


PETER T. YOUNG, Chairperson
Board of Land and Natural Resources

C. Site description

Situated along the east rift zone of Kilauea Volcano within the Puna district on the island of Hawai'i, this vast tract represents the last large intact unprotected native lowland forest ecosystem in the State of Hawai'i. The property is comprised of a combination of dense native 'Ohi'a forest and areas of recent lava flow where kīpuka (islands of vegetation in the flow) serve as seed banks for future generations of forests. Small portions of the property's western boundary have been covered by lava flows. The land is gently sloping and ranges between approximately 1,000 ft and 2,200 ft above sea level.

D. Ownership – title history

According Findings of Fact 7 and 8 of the case cited above (Civil 89-089) (all emphases and omitted 'okina and kahakō as in original):

7. On March 8, 1848, Kamehameha III conveyed to the Hawaiian government 38 *ahupua'a* and three 'ili in the Puna district, and retained two *ahupua'a* and one 'ili. 2 Rev.L.Haw. 2152-2176 (1925). The *ahupua'a* that the King conveyed to the government were: Aahalanui, Halepuaa, Halona, Hapaiki, Haukalua 1 and 2, Honolulu, Honomu, Kaikowowo, Kamaili, Kanekiki, Kaohe, Kapaahu, Kaualea, Kaukulau, Kealakomo and Kilauea, Keauohana, Keokea, Keonepoko, Ki, Kiapu, Kikala 1 and 2, Kupahua, three 'ili in Kupahua, Lonokaeho, Makena, Makuu, Malama, Manawale, Oneloa, Opihikao, Panauiki, Pohoiki, Popoki, Poupou 1 and 2, and Waawaa. 2 Rev.L.Haw. 2156-2174 (1925). The *ahupua'a* in Puna retained by Kamehameha III (later known as Crown Lands) were Apua and Kaimu and the 'ili of Waiakolea. 2 Rev.L.Haw. 2152-2156 (1925).

8. On June 7, 1848 the Hawaiian legislature ratified the King's action, declaring that all of the aforementioned government and Crown lands, which included the *ahupua'a*, were to be set aside for the Hawaiian government "subject always to the rights of tenants". 2 Rev.L.Haw. 2156, 2174 (1925).

Following the overthrow of the monarchy, these government and crown lands along with other lands across the islands were taken by the Republic of Hawai'i, and then "ceded" by the Republic to the United States at Annexation. The lands in question here were assigned to the territory. In 1911, 19,850 acres were designated as a forest reserve that came to be known as the Puna Forest Reserve. That Reserve was expanded to 25,738 acres in 1928. At statehood, the lands in question were transferred to the state of Hawai'i and continued to be held as a Forest Reserve.

In 1981, TMK 1-2-10: 03, one of the two Wao Kele O Puna parcels, comprising 16,843.89 acres, was designated by the State of Hawai'i as the Wao Kele O Puna Natural Area Reserve. It did so under its authority provided by HRS Ch. 195 in order to "preserve in perpetuity specific land and water areas which support communities, as relatively

unmodified as possible, of the natural flora and fauna, as well as geological sites, of Hawaii." (HRS § 195-1(4)).

In 1986, however, the Board of Land and Natural Resources (BLNR) committed to transfer the property to the current owner, the Estate of James Campbell, to facilitate the development of geothermal power plants in an attempt to reduce dependence on oil imports. On February 27, 1987, the BLNR issued Land Patent No. S-15,666, transferring the land to Campbell Estate in fee simple.

One well, Well KA1-1, was drilled on the property. Another well, SOH-4, was drilled on an adjoining parcel owned by Campbell Estate but not one of the Wao Kele O Puna parcels considered herein. Subsequently, however, attempts at exploration and drilling proved unprofitable.

Under the terms of the governing will, the Estate of James Campbell is under mandate to dissolve by January 20, 2007 and has placed a high priority on selling the property. TPL has a binding and exclusive acquisition agreement for the property. TPL has until September 13, 2005 to find a subsequent owner or it may withdraw from the agreement to purchase with Campbell. It is the intent of TPL to transfer the ownership to DLNR if OHA does not acquire the property.

E. Current easements and restrictions

There are three major sets of easements and restrictions (exclusive of zoning restrictions) on the property currently. The first stem from the terms of the land patent (S-15,666) issued to Campbell Estate by the State of Hawai'i. The second arise from agreements made between the state, Campbell Estate, and other parties regarding geothermal energy development on the parcels. The third arise from a court case where the court judicially recognized rights for traditional and customary access.

Land Patent Restrictions. At the time of transfer of the property from the state to Campbell Estate, the property was covered with a reservation to the State "in perpetuity [of] all minerals... together with the right to enter, sever, and remove minerals...; provided that the State shall pay just compensation to the surface owner for improvements taken as a condition precedent to the exercise of such reserved rights." The above referenced patent also reserved to the State 1) "All surface and ground waters appurtenant to the said land..." and 2) "All prehistoric and historic remains found in, on, or under said land."

Geothermal lease, license. In order to develop geothermal resources on the parcels, Campbell Estate needed to obtain from the state two items in addition to title to the lands: a) designation of a geothermal resource subzone over the areas contemplated for development, and b) a lease from the state for their reserved mineral rights.

In 1986, around one-third (9,013 acres) of the Wao Kele O Puna parcels was designated as a geothermal resource subzone. Campbell owned the land at the time of designation of the geothermal subzone and, subsequent to such designation, entered into two agreements with the State. The first of these was the *R-5 Mining Lease*, which became

effective as of July 23, 1987. Since the State owned the mineral rights while the Estate owned the surface land, that agreement leased the State's rights to develop the geothermal resources. Thus, the Estate has rights to the subsurface as well for the time of the Lease, which was for a primary term of 10 years but would continue thereafter for up to 65 years so long as "geothermal resources are produced or utilized in commercial quantities." The primary term would have ended 1997, but a subsequent agreement (explained below) currently fulfills the requirement that geothermal resources be utilized, so the R-5 Lease is still binding on the State and will expire in 2047 so long as use continues.

Under the State R-5 Lease, the Lessee (presently the Estate) has the sole and exclusive right to drill for, produce, and take geothermal resources so long as the Lessee complies with HRS Ch. 182 and BLNR's Rules on Leasing and Drilling of Geothermal Resources (Chapter 13-183, HAR). The Lessee must pay an annual rent of \$1.00 per acre (\$9,014 per year). If operating for production, the Lessee must also pay a royalty that is calculated according to a percentage of the gross proceeds from sale or use of the geothermal resource. The Lessee must submit monthly accountings of the production in order to determine royalty payments. The Lessee must also pay real property taxes on the surface of the land and on structures/improvements.

Under its Lease from the State, the Estate then sublet the rights to two other parties (first to True Geothermal for production, then for to the State for scientific study). On February 1, 1996, the Estate licensed two of the wells drilled by the previous sub lessee to the State under the *Well Monitoring License Agreement*, and that license is still in effect. Essentially, the State currently leases what it owns. The purpose of the State's license is to advance understanding of the geothermal resource by monitoring the geothermal levels of two wells, KA1-1, which is a geothermal production well, and SOH-4, which stands for "scientific observation hole." KA1-1 is on the Wao Kele O Puna parcels, but SOH-4 is on an adjoining parcel owned by Campbell Estate.

The term of the License is for twenty years, so it would expire January 31, 2016. However, either party may end the contract early. The Estate may choose to terminate the License upon a thirty-day prior written notice, but only if the Estate wants to use or allow others to use the wells for development and production; thus, the Estate can not terminate the license to allow another party to use the wells for scientific research. The State may surrender its rights under the License at any time. Different responsibilities attach to the parties depending on how the License ends. These responsibilities are addressed more in discussion section III. L., below.

Traditional and customary rights. The parcel has been subject to extensive litigation, much of which was conducted by NHLC and hence funded by OHA. The Final Judgment in the court case cited above (Attachment C) specifically adjudicated the rights of the plaintiffs to enter into the defendants land and stipulated that these rights would pass to subsequent owners. The Final Judgment specifies that (p.2):

"The Estate of James Campbell...including successors in interest to [the land]...are permanently enjoined from excluding the following persons from entering the undeveloped portions of the land and using the developed portion for reasonable access to the undeveloped portions...to perform

customarily and traditionally exercised subsistence and cultural practices:

- (a) Hawaiian subsistence or cultural practitioners who are descendants of the inhabitants of the Hawaiian Islands prior to 1778;
- (b) Person or persons accompanying Hawaiian subsistence or cultural practitioners described in (a); or
- (c) Persons related by blood, marriage or adoption to Hawaiian subsistence or cultural practitioners described in (a).

This court order has the practical effect of an easement that runs with the land.

F. Zoning

The State Land Use Classification for both parcels is Conservation. Parcel 2 is within the Protected subzone and Parcel 3 is in the Protected and Limited subzones. The protected subzone is designed to protect valuable resources in such designated areas as restricted watershed, marine, plant, and wildlife sanctuaries; significant historical, archaeological, geological, and volcanological features and sites; and other unique areas. The primary permitted uses in a protected subzone are research, education, and some recreation, as long as no permanent facilities are contemplated. The limited subzone is for areas in which natural conditions restrict human activity (40 percent slopes, flooding, and volcanic activity), with timber harvesting and flood control added as permitted uses. In addition, as described above, part of the parcels are in the geothermal subzone, which allows the development of geothermal resources.

Because both parcels are entirely within the state's Conservation District, no county zoning applies. The parcels are entirely outside the 500 year floodplain and therefore not subject to flood related restrictions.

G. Utilities

The parcels are not served by any utilities (e.g. water, telephone, sewer, or electricity). Power and telephone lines are available on Pāhoa Road and Homestead Road near the property.

H. Access

Campbell Estate is providing to TPL an access easement across an adjoining parcel. TPL will transfer this easement to OHA along with the title to the Wao Kele O Puna parcels. The access runs from the public "Middle Road" in the Ka'ōhe Homesteads, across a Campbell Estate parcel, and to the Wao Kele O Puna parcels. A map showing that easement appears below as Attachment D.

I. Appraised value

An appraisal dated September 19, 2003 was completed for TPL by Medusky & Company, Inc., prepared by two employees who are Hawai'i State Certified General